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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1918

No. [redacted]230

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, APPELLANT AND PLAINTIFF IN ERROR,

vs.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF PHILIPPINE ISLANDS.

FILED JULY 23, 1917.

(26,059)

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THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 10241.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Be it remembered that the following proceedings were had in the above-entitled action:

On the 9th day of September, 1914, the petitioner filed with this Court a petition, reading as follows:

(Heading and Title.)

Petitioner alleges:

I.

That petitioner is a foreign corporation, duly authorized to transact business in the Philippine Islands, having its principal place of business therein in the City of Manila, and engaged in the business, among others, of a public carrier of passengers for hire by means of an electric street railway in the City of Manila and its suburbs, and is a public utility within the meaning of Act No. 2307, as amended; that respondent is the Board of Public Utility Commissioners created by Act No. 2307, as amended;

II.

That the City of Manila, in the year 1903, by authority of Act No. 484, granted, for a valuable consideration, and by its Ordinance No. 44, to Charles M. Swift, a franchise for the construction, maintenance, and operation of a street-railway system for the carriage of passengers for hire in the City of Manila; that said franchise contains the following provision: "Members of the police and fire departments of the City of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed"; that the aforesaid franchise, with all its privileges and obligations, was duly transferred and assigned by said Charles M. Swift to petitioner, and that peti-

tioner, by virtue of said franchise, is now operating, and for
2 more than nine years has operated, an electric street-railway system in the City of Manila and its suburbs for the carriage of passengers for hire;

III.

That from the beginning of its operation as aforesaid petitioner has constantly imposed, and still imposes, the restriction upon the enjoyment of free transportation on petitioner's cars by members of the police and fire departments of the City of Manila wearing official badges that such badges shall be worn visibly so that the character of the person so enjoying free transportation may continuously and at all times be apparent during such transportation; that the City of Manila and the police department thereof have accepted such restriction and have acquiesced therein from the beginning of petitioner's operation and for a period of about nine years; that the aforesaid restriction is reasonable and proper to prevent frauds upon petitioner, and to enable petitioner and its employees to determine what persons are entitled to free transportation and adequately to check and verify the collection of fares; that petitioner has carried, and is willing to carry, without charge, on its cars, all members of the police and fire departments of the City of Manila wearing official badges who conform to the aforesaid restriction;

IV.

That respondent, on the 20th day of June, 1914, after notice and hearing, made an order in writing, and caused notice of the same to be given to petitioner, whereby the respondent required petitioner on and after the 1st day of July, 1914, to furnish free transportation to members of the police department of the City of Manila belonging to the secret service bureau thereof wearing official badges concealed about their clothing in such a way that said badges might be displayed to conductors or inspectors on the petitioner's cars when required so to be displayed for the purpose of identification; that thereafter a rehearing was granted by respondent to the petitioner, and pending such rehearing a suspension of the aforesaid order was granted until further order of respondent; that on the 29th day of August, 1914, respondent made an order, and caused notice thereof to be given to petitioner, reaffirming the aforesaid order of respondent of June 20, 1914;

V.

That respondent claims and asserts that its aforesaid order of June 20, 1914, is, without further process or proceedings, obligatory upon petitioner, and enforceable against petitioner, in accordance with section 32 of Act No. 2307; that there is no appeal from said order to any court or authority, nor is there any plain, speedy, or adequate remedy available to petitioner other than as provided by sections 37, 38, and 39 of Act No. 2307;

VI.

That respondent is, and was, without jurisdiction to make the aforesaid order of June 20, 1914, and that said order is beyond the jurisdiction of respondent; that non-compliance on the part of petitioner with the said order of June 20, 1914, will entail upon petitioner the defense of actions instituted under the provisions of section 32 of Act No. 2307, and other litigation, and controversy with members of the police department of the City of Manila claiming the benefits of the said order of June 20, 1914; that the effect of the said order of June 20, 1914, unless annulled, will be to take the property of petitioner, to wit, the right to collect fares for the carriage of passengers, without due process of law, and to take said property of petitioner for public use without compensation:

VII.

That there was, and is, no evidence before the respondent to support reasonably the aforesaid order of June 20, 1914.

Wherefore petitioner prays:

(1) That the order of respondent, the Board of Public Utility Commissioners, of the 20th day of June, 1914, ordering the petitioner, the Manila Electric Railroad and Light Company, to furnish free transportation to the members of the police department of the City of Manila belonging to the secret service bureau thereof wearing official badges concealed about their clothing be superseded and stayed pending the final order of the Supreme Court herein;

(2) That the proceedings in this cause be expedited in accordance with the provisions of section 39 of Act No. 2307, and that the appropriate rules and orders to that end be made by the court;

(3) That the respondent, the Board of Public Utility Commissioners, be required to certify to the Supreme Court the evidence presented to the Board, together with the finding of the Board and all orders issued thereon;

(4) That the aforesaid order of the Board of June 20, 1914, and the order reaffirming the same of August 29, 1914, be annulled and set aside;

(5) And that petitioner have such other and further relief as may be just and appropriate.

Manila, P. I., September 9, 1914.

LAWRENCE, ROSS & BLOCK,
(Sgd.) By W. H. LAWRENCE,
Attorneys for Petitioner,
No. 15 Plaza Moraga, Manila.

On the 12th day of September, 1914, this Court issued and order requiring the Board of Public Utility Commissioners to file with the Court a certified copy of the record of the proceedings had before said Board in its case No. 93.

On or about the 29th day of September, 1914, the Secretary of the

Board of Public Utility Commissioners filed with this Court a certified copy of the record of the proceedings in said case No. 93 of the Board of Public Utility Commissioners.

4 Thereafter the parties filed their respective briefs, and after a hearing on the briefs, this Court rendered an opinion and order, reading as follows:

This is a proceeding brought in this court under section 37 of Act 2307 to revoke an order of the Board of Public Utility Commissioners requiring the Manila Electric Railroad and Light Company to carry on its street cars, free of charge, secret service members of the police force of the city of Manila.

The city of Manila in the year 1903, by authority of Act 484, for a valuable consideration, and in and by virtue of its ordinance No. 44, granted to Charles M. Swift a franchise for the construction and maintenance of a street railway system for carrying passengers for hire in the city of Manila. Swift immediately assigned his interest in the franchise to the Manila Electric Railroad and Light Company, which is now operating, and for more than 9 years has operated, an electric street railway system in the city of Manila and its suburbs for the carriage of passengers for hire.

Among other things, the franchise, as set out in ordinance 44, contains the following provision:

"Members of the Police and Fire Departments of the City of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed."

The company began to operate its street railway in April 1905. At the outset it promulgated a rule that, in order that members of the police and fire departments of the city of Manila wearing official badges be permitted to enjoy free transportation on petitioner's cars, they must be wearing their badges visibly, so that the fact that the person enjoying free transportation was entitled thereto might be continuously apparent during the period of transportation. For 9 years, the time intervening between the commencement of the operation by the company of its street railway system and the order of the Board of Public Utility Commissioners which is the subject of this proceeding, this rule was enforced and was acquiesced in by the city of Manila and by its police and fire departments without objection. In accordance with that rule policemen, whether uniformed or not, but wearing their badges exposed, were transported without charge, while those who carried their badges in their pockets or concealed them about their persons paid fares. The city of Manila, through its secret service bureau, during the period referred to, paid more than forty thousand pesos for the transportation of the secret service members of the police force on the company's cars.

In May 1914 the Chief of the Secret Service Bureau sought to obtain a reversal of this long-established practice and accordingly made a petition to the Board of Public Utility Commissioners alleging that the street car company, in requiring the badges of

5 the secret service members of the police force to be worn visibly during the period of transportation, was imposing an

unreasonable and unlawful restriction on the transportation of the members of the police department. Following a hearing on this petition, the Board of Public Utility Commissioners made the order objected to, which is as follows:

"The Manila Electric Railroad and Light Company is, therefore, ordered to furnish free transportation to the members of the Police Department of the City of Manila belonging to the Secret Service Bureau thereof wearing their official badges, whether openly or concealed about their clothing in such a way that said badges may be displayed to conductors or inspectors on the Company's cars when required to do so for purposes of identification.

"This Order shall take effect the first day of July, nineteen hundred and fourteen."

There seems to be little doubt—in fact, no one has raised any question in regard to it—that the rule promulgated by the company requiring secret service men who desired free transportation on the company's cars to wear their badges exposed during the period of transportation was and is a reasonable rule, proper to prevent frauds on the company and to enable it and its employees to determine the persons who are entitled to free transportation and adequately to check and verify the collection of fares. The only contention made by the city of Manila, which is really the entity carrying on this litigation, is that this rule, although not inherently unreasonable, is a violation of that provision of the ordinance incorporating the company's franchise which we have already quoted.

The company in this proceeding has raised many questions relative to the jurisdiction, authority and power of the Board of Public Utility Commissioners. We have come to the conclusion, however, that we will rest our decision on what may be termed the merits of the controversy, that is, the construction of the clause in the company's charter already referred to; and our decision on that point being in favor of the company, it will be unnecessary to discuss any of the other questions raised by counsel for the company.

We are of the opinion that the construction given by the company to the wording of that clause of the franchise already referred to is the one to which we must adhere. We base this conclusion on two grounds:

In the first place, the history of the enactment of ordinance 44 and the amendments which were offered and made to the original draft thereof, demonstrate to our satisfaction that it was not primarily
the intention of the legislature to require the company to
6 carry free of charge all of the police force of the city of
Manila under any and all circumstances. Ordinance 44 is a copy of Act 484 of the Philippine Commission. Turning to the minutes of the public sessions of the Commission from September 1, 1902, to September 1, 1903, which refer to the passage of that act, we find that, when the bill for the franchise to the street-car company came to its final reading, the clause in question stood as follows:

"Members of the police and fire departments of the City of Manila shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed."

An amendment was then offered at the suggestion of the company and adopted by the Commission by which there was inserted after the word "Manila" the words "wearing official badges." It was evidently intended by the amendment to permit the company to exclude from the privilege of free transportation some members of the department, namely, those not wearing official badges. The question is what is meant by "wearing official badges?" Must they be worn visibly or could they be worn or carried concealed?

In the second place, the franchise in question being a contract between the city of Manila and the street-car company under which an extremely valuable consideration passed from the company to the city, the construction placed on the clause under consideration by the parties to that contract must exert a powerful influence in the determination of the question presented. It is admitted that for nine years, from the commencement of operation by the company till the order of the Board of Public Utility Commissioners, the parties to the contract construed the words "wearing official badges" to mean wearing them visibly during the period of transportation. The language of the clause being susceptible of construction, we do not believe that we are at liberty to adopt at this time a construction diametrically opposed to that which the parties have placed thereon for so long a time. (Jover v. Insular Government, 221 U. S. 623.)

The intention of the legislature as evidenced by the amendment, (and the legislature was simply trying to set down what the parties interested had agreed on), together with the practical construction adopted by the parties and acted on for a long period of time, is sufficient to constrain us to accept the construction thus practically given and to overrule that adopted by the Board of Public Utility Commissioners. The question before us presenting simply one of law, our authority to deal with the subject-matter completely and definitely is clear.

The order of the Board of Public Utility Commissioners
7 is vacated, set aside and annulled.

So ordered.

(Sgd.) SHERMAN MORELAND.

We concur:

(Sgd.) C. S. ARELLANO.
" FLORENTINO TORRES.
" E. FINLEY JOHNSON.
" GRANT T. TRENT.
" MANUEL ARAULLO.

Reserving, with the consent of the Court, my right to file a separate opinion at a later day, I dissent.

(Sgd.) A. C. CARSON.

The following proceedings were had before the Board of Public Utility Commissioners in its case No. 93 hereinbefore referred to:

On the 18th day of June, 1914, the Board, at the instance of the city of Manila, issued the following order:

(Heading and Title.)

You are hereby required to be and appear before the Board of Public Utility Commissioners at its office in the San Agustin Building, Intramuros, at 9 o'clock, A. M., on the 19th of June, 1914, to show cause why you should not be required to furnish free transportation to the members of the Department of Police of the city of Manila belonging to the Secret Service Bureau thereof.

In pursuance of said order, a hearing was held on the 19th day of June, 1914, before the Honorable C. A. De Witt, Member of the Board of Public Utility Commissioners. Mr. C. N. Duffy, President of the Manila Electric Railroad and Light Company, Mr. W. H. Lawrence, attorney, and Mr. L. S. Cairns, Assistant General Manager, appeared for the respondent company; and Mr. John W. Green, Chief of the Secret Service Bureau of the City of Manila, appeared for the petitioner, City of Manila. At said hearing the following testimony was taken:

(Heading and Title.)

Member De Witt: Do you want to make this an ordinary hearing?

Mr. Lawrence: How does the case present itself, Mr. De Witt?

Member De Witt: It comes to us in a communication from the Municipal Board, and I thought that I would shape the issue in the form of order on the issue of the case.

8 Mr. Lawrence: Is it presented as an effort to make us comply with some obligation?

Member De Witt: Yes.

Mr. Lawrence: What?

Member De Witt: To comply with an obligation contained in your franchise to furnish free transportation to the Police Department.

Mr. Duffy: We offered them transportation if they would comply with our regulations and wear their badges on the outside of their coats so that we, or our conductors and inspectors could recognize them—see who they were.

Member De Witt: Of course, Mr. Duffy, I understand that the secret service men can wear their badges outside, but it must also be understood that the secret service pay their fare. They are entitled to free fare and I think the Manila Electric should return the money already collected from the Secret Service.

Mr. Duffy: You do?

Member De Witt: Yes, and I think that it has been heretofore unjustly collected.

Mr. Lawrence: Well, it is just as Mr. Duffy says, that the secret service has been offered this free transportation if they will comply with certain regulations laid down by the Company. The secret

service did not comply with those regulations, and so paid their fare. It seems as though you have construed that this is a withdrawal or something of the offer.

Member De Witt: Not at all; I understand the situation thoroughly. The law does not say that the badges shall be worn any place where they shall be visible to the public.

Mr. Lawrence: No, but we urge that that is a reasonable restriction that the Company is authorized to apply, because it must be manifest to the Board that we have no adequate check on conductors by means of inspectors if the secret service men are unknown to the inspectors, unless these secret service men show the inspector their badges. Otherwise he couldn't tell who was entitled to ride free.

Member De Witt: Would you contend that the restriction would defeat the very purpose of the stipulation in the franchise? You understand that a secret service man must be allowed without question to mingle with a crowd without being subject to identification——

Mr. Duffy: That shouldn't prevent his compliance with our restriction.

Member De Witt: So that if a man is required to wear his badge in a visible place so that the entire public can see that he is a secret service man, he ceases to be a plain-clothes man. What difficulty would be involved in having the badge worn inside the lapel of the coat.

Mr. Lawrence: Simply that the Company's inspectors and other checkers would be unable to determine that the man was entitled to ride free.

Mr. Green: I don't see any way that the men could use their badges for a ride in such a way, on the lapel of his coat, without defeating the purpose of concealing his badge. Do all your checkers work openly?

9 Mr. Lawrence: No—that is, I don't know how it is now. I know the Company has some spotters to do that work. It is hard enough to check up conductors as it is.

Member De Witt: There is a plain obligation in the franchise that requires the Company to carry secret service — if they wear their badges. There is nothing in the franchise that says badges must be worn openly.

Mr. Green: I can state here that the men always wear their badges. They must. They are required to wear them; but the badge was never intended to be worn on the outside of the coat.

Mr. Lawrence: Of course, that that ordinance prescribes that they shall wear a badge, I think, indicates, as intended, that the badge should be worn openly, otherwise, unless presented, no one would know that they belong to the Police Department.

Mr. Duffy: The manner of wearing the badge ought to be a simple matter. We have got to have some means of identifying these men.

Mr. Green: The secret service badge does not represent that. It is the official badge of policemen assigned to work in the secret service bureau. All members of the secret service are members of

the police department. They are detailed or assigned to that work. These badges are not intended to be worn openly and cannot be visible to the general public. Then it must have been the intention of this franchise to allow members of the secret service to ride without fare. It seems to me that is no question.

Mr. Lawrence: Secret service men have been wearing their badges. You could go from one part of the city to another on a car and would probably have no reason to show your badge to any one, couldn't you?

Mr. Green: The badge is of such nature that it cannot be worn in a conspicuous place.

Member De Witt: I should think that matter is very easily worked out. Mr. Duffy and Mr. Lawrence, the whole question of identification and checking would be overcome by permitting the secret service men to wear their badges in a concealed position as he usually does, and at the same time place in the hands of the chief of the Secret Service certain tickets, marked for the purposes of identification, if you will, for the purpose of checking.

Mr. Lawrence: Well, that is allowing the secret service force to ride on complimentary tickets instead of on their badges.

Member De Witt: No, they wear their badges in compliance with the provision of the franchise requiring them to wear badges, but so as to assist the Company in its checking work, you place in the hands of the Chief of the Secret Service, for distribution among the members who are to use the transportation, special tickets, and when they are taken up they certainly can be checked without much difficulty.

Mr. Lawrence: That would be riding on complimentary tickets as far as I can see.

Mr. Duffy: It certainly would, and the Company would have to pay for the printing of the tickets, I suppose.

Mr. Green: I don't see how you can call it complimentary transportation when it is provided by law.

(At this point Member De Witt suggested that a more orderly and formal hearing be followed, to which those present consented.)

Mr. Green, introduced as a witness in behalf of the complainant, upon being sworn by Member De Witt, testified as follows:

Examination by Member De Witt:

Q. State your name and occupation.

A. John W. Green, Chief of the Secret Service Bureau of the Police Department of the City of Manila.

Q. Will you state whether or not the members of the Secret Service of the City of Manila are at the present time securing free transportation from the street car company?

A. They are not.

Q. How long have they been compelled to pay for transportation?

A. From my own knowledge as chief of the Bureau I can say

they have paid for transportation since my arrival in the Islands, May 11, 1913.

Q. Prior to that time, have you any information?

A. I have knowledge from the date the Company began to operate until I left the Islands in 1906. During those years the members of the Secret Service did not receive free transportation from the Manila Electric.

Q. In the intervening years 1906-1911?

A. I have documentary evidence to the effect that they did not receive transportation during those years.

Q. From the very time of the beginning of the street car service, they haven't received free transportation?

A. They have not.

Q. Do secret service men wear badges?

A. At all times.

Q. Where do they wear them?

A. Generally concealed; sometimes under their coats, sometimes in different places, but always concealed.

Q. Would it be possible to wear these badges openly and do their work efficiently?

A. Not at all. The badges are not meant to be worn where they can be seen by the public.

Q. What is the purpose of the badge?

A. It is to identify the wearer as a member of the Secret Service of the Police Department—as an officer of the law.

That is all.

Examination by Mr. Lawrence:

Q. Has the Street Railway Company to your knowledge denied free transportation to your men wearing badges visibly?

11 A. No, I believe not.

Q. Isn't it a fact that the Company has offered to carry your men free if they will wear their badges visibly?

A. They have, but as I have explained; the men have orders not to wear their badges visibly. It is practically an impossibility for them to wear their badges openly or visibly, and such an offer is practically a refusal to give transportation free, because it cannot from the very nature of the thing be expected.

Q. There are members of the Police Department outside of your department, known as plain clothes-men, who do not wear their badges visibly, are there not?

A. I presume there are, although they have no official status. There is no provision for them. That is simply an assignment or detail with which I have nothing to do. In any event they don't wear a Secret Service badge. Those men wear their police badges.

Member De Witt: Men assigned to plain clothes duty are policemen?

A. Yes sir, they are detailed from the uniform police for duty with the Secret Service Bureau. Yes, there are so many men in each precinct; the Captain has authority to pick out one, two, three

or four of these men and detail them for work in the precinct only, as plain cloth-smen. They are only policemen in plain clothes, working in the precinct to which they are assigned.

That is all.

Member De Witt: Do you wish to present Mr. Duffy?

Mr. Lawrence: No, I don't think there is a fact here.

Member De Witt (to Mr. Duffy): The difficulty with the wearing of concealed badges, as I understand it, is with the means of securing some efficient system of checking. Can't that be met by the placing of tickets, special tickets, in the hands of the Chief of the Secret Service to be distributed among secret service men and taken up; then, if you do, you simply give them free transportation.

Mr. Duffy: Of course, that could be done, but that would be giving them complimentary tickets. If they wear their badges.

Member De Witt: Well, they will wear their badges.

Mr. Green: No, wearing their badges officially. He says theirs is a reasonable restriction. You couldn't expect members of the Secret Service to wear their badges the same as members of the Fire Department and the Police Department.

Mr. Duffy: But that means conspicuous.

Mr. Lawrence: I can't see that any restriction which is reasonable, if we furnish free transportation, would be an unreasonable restriction.

Mr. Green: I didn't say that.

Mr. Lawrence: No, but the way you stated it was, that any restriction that defeats the franchise, the purpose of the franchise, that we shall carry men who are to be distinguished from the public, as Police and members of the Fire Department.

12 Mr. Duffy: The franchise says "wearing badges" and I think the Company has a right under that franchise to make its regulations in the matter.

Member De Witt: He is wearing his badge on the inside of his coat. This reasonable restriction, as I understand, wearing the badge, you mean on the outside of the coat——

Mr. Green: And that is the restriction imposed on the Police Department proper.

Member De Witt: That is the restriction imposed by the Company.

Mr. Green: Yes, and the Chief of Police makes that a matter of discipline with the men. He has issued an order to that effect to plain clothesmen. That is only at your solicitation and upon your plan.

Mr. Duffy: Not our plan, our advice. As a matter of fact and of personal knowledge, a member of your department came into the office of the Chief of Police two or three days ago with a list of names of men who had not showed their badges and complained of men riding on badges without showing them.

Mr. Green: As a matter of fact, I learned from the men that the

conductors did not call for the men's badges but seeing their badges, took their numbers and didn't require them to wear their badges. When the Company allowed the men to ride on the cars simply by showing their badges, some of the conductors acquired a knowledge, or knew some of the men, and after, when that restriction was imposed, of requiring the man to wear them openly, the conductors, having knowledge of these men from their experience with them before, required them to show badges, and the men have been willing to pay their fares, but the conductors have passed them by; and the men have been ordered not to ride on their badges, but to pay fares, because the restriction as indicated by you, of wearing badges on the coat, was of such nature as to prohibit men from using such transportation. Therefore, from that time, transportation has been paid for by the City of Manila.

Mr. Duffy: In so far as the conductor violating any instructions, that has nothing to do with the Company's rules; and so far as the Company—that is the occurrence cited there; he simply brought in a list of men along so that the chief could discipline the men, and the chief said, "Why didn't you have them ejected from the car."

Mr. Green: Well, those instructions are due to the direct instance of the Manila Electric.

Mr. Duffy: Certainly they are.

Mr. Green: That is not a voluntary order of the Chief of Police.

Mr. De Witt: You require that badges be visible for checking purposes.

Mr. Duffy: Our understanding and arrangement, and notification to the Chief of Police by letter, is that the badge must be worn at all times conspicuously while on the cars, and the same to the Chief of the Fire Department.

13 Mr. De Witt: Your purpose is——

Mr. Duffy: That purpose is to identify men, so there will be no question between conductors and inspectors or the first and second inspectors.

Member De Witt: About checking?

Mr. Duffy: Yes.

Member De Witt: The checking problem would be solved by the issuance of tickets.

Mr. Duffy: I don't know whether it would or not. Many theoretical problems are solved.

Member De Witt: Will you please explain.

Mr. Duffy: I am not prepared to explain.

Member De Witt: What difficulties would arise?

Mr. Duffy: There may be complications with the tickets.

Member De Witt: That is, you would not feel like trusting the distribution of tickets to the Chief of the Secret Service.

Mr. Duffy: No. I would be most decidely opposed to any distribution of tickets for this purpose. It is not a question of my confidence in the Chief of Secret Service, it is a matter of principle or providing or distributing them. We have such—further evidence

of the disadvantageous results of that practise. It is very firmly impressed on my mind.

Mr. Green: In relation to Secret Service men?

Mr. Duffy: In relation to the distribution of tickets.

Member De Witt: How much has the City of Manila been paying monthly for transportation for the Secret Service?

Mr. Green: I should say from four hundred to seven hundred pesos monthly.

Member De Witt: It seems to me your checking problem would be solved completely if you would distribute, say a hundred tickets, suitable marked if you wish, the conductors would recognize secret service men by that instead of their displaying the badge.

Mr. Lawrence: That leaves the requirement of the ordinance, that men shall wear the badge, without much force or meaning.

Member De Witt: Well, they do wear the badge.

Mr. Lawrence: It wouldn't make any difference. They won't show the badge in addition to this ticket.

Member De Witt: They would do so.

Mr. Lawrence: That is what we are trying to do, so they will show it.

Member De Witt: I don't think your requirement is a reasonable one.

Mr. Lawrence: That is the question you will have to pass upon.

Member De Witt: I think the obligation of the Company is so plain. The Secret Service have to perform duties that would make it utterly impossible to do if they divulge to the public that they are secret service men. They are entitled to free transportation under your franchise, and the Company accepted the franchise under those terms.

14 Mr. Lawrence: That is simply an interpretation of the franchise. We are willing to comply with the franchise—as to proper interpretation.

Mr. Duffy: I would like to ask whether Mr. Green or Mr. Lawrence—that was before your time, Mr. Cairns—whether Mr. Green or Mr. Lawrence have any knowledge of this question having been up before.

Mr. Green: I understand that the Police Department has protested against the action of the Railroad Company in practically prohibiting, and effectually prohibiting, the members of the Secret Service or Police department from using the transportation.

Mr. Duffy: Oh, yes, I can very well see how they would protest. Was the matter ever up officially before the Municipal Board?

Mr. Green: No, I think not. As a matter of fact I have here a list of every ticket expended by the Secret Service Bureau. There are the amounts (holding paper to Mr. Duffy).

Mr. Duffy: How many men have you, Chief?

Mr. Green: I have now 52 on the morning report. I don't count the clerks.

Mr. De Witt (to Mr. Green): Do you present this as an exhibit?

Mr. Green: Yes. (Continuing:) The members of the Bureau

has not always been so many as at present. We have always used carromata transportation and other vehicles.

Mr. Duffy: I thoroughly agree with you, Mr. De Witt, that the obligation of this Company is to furnish free transportation to the members of the police and fire departments wearing badges and subject to this reasonable restriction; and the reasonable restriction of the Company heretofore imposed is the wearing of the official badge conspicuously at all times while on the car.

Mr. Lawrence: What is your idea, Mr. De Witt, of the meaning of that provision, that the Company can impose reasonable restriction.

Mr. De Witt: It don't say that—subject to such reasonable and proper restriction as may be imposed. It doesn't say Company. I should say that the Act contemplates the imposition of such restriction that an abuse of the privilege will not occur—the use of the free transportation for Secret Service purposes will not occur. It seems to me that we could insure against that absolutely through the placing of special tickets in the hands of the Chief of Secret Service to be distributed only when transportation is to be used for official purposes. That adjusts itself to your checking situation?

Mr. Lawrence: I think Mr. Green is perfectly willing that an employee of the Company shall be able to know his secret service men.

Mr. Green: I am moved by two considerations in this matter. The first consideration is I think the most important—transportation for the men, in order that they may perform the service
15 for which they are employed. They must have transportation; they must move about now and then. If I had the money to hire automobiles or carromatas and pay car fares, I would not bother with this matter at all. I haven't. The transportation is furnished me, according to my supposition, by the franchise, which gives the men of my office free transportation. That is one consideration. They must have transportation. And another consideration is that the men must remain concealed whenever possible. Now, if any portion of these two considerations conflict with one another, then the smaller consideration has to give way to the greater. It would be preferable for the men not to disclose their identity even to the street car conductor, if that were possible, but if not, that must give way to giving them transportation, but I object to the men disclosing their identity even to the conductors and inspectors. If they show their badges to the conductor other people on the car would naturally see the badge.

Mr. Lawrence: You would be willing if it was found necessary for the purpose of economy.

Member De Witt: As a matter of fact, Mr. Lawrence, I don't believe the terms of the franchise would demand the identity of the members of the police department being kept from the employees of the street car company.

Mr. Lawrence: Well, it seems to me that is coming right down to asking the street car Company to assist the City in its expenses.

Member De Witt: That is true, but that was one of the conditions under which the street car company received its franchise.

Mr. Lawrence: Mr. Green wouldn't ask for this now if he were provided with funds.

Member De Witt: It seems to me the money has been collected wrongfully right along. It is one of the provisions under which the company was able to secure its franchise. The City saw the opportunity to secure free transportation for its men. At the time the franchise was secured, the Company was willing to furnish that free transportation.

Mr. Duffy: Yes, but apparently the government didn't care to secure that free transportation for men who do not show their badges. They have been willing to pay their fare.

Member De Witt: No——

Mr. Lawrence: Well, the only reason I can see for them objecting to the requirement of wearing badges is for the purpose of identification.

Member De Witt: I say, the secret service is willing to furnish that identification, but in such a way as not to advertise that they are secret service men, thereby defeating the purpose of their existence. We have covered the ground three or four times.

Mr. Duffy: Well, isn't the whole question an interpretation of the franchise. The Company has interpreted it one way and the Board another, and Chief Green has interpreted it another. Mr. De Witt, I presume, has his own interpretation.

16 Member De Witt: Well, I can't make an order until there are more proofs brought here. Can't we straighten up this difficulty with the City?

Mr. Cairns: You stated a while ago that it appeared to you that the company had wrongfully collected this money during the last year. I want to ask if at any time during that time the question has come up of wearing badges.

Mr. Green: And the Company practically denied the secret service that transportation by imposing that restriction.

Member De Witt: I don't see anything in the law that requires badges to be worn conspicuously; and the requirement of the Company that the badges be worn conspicuously is a requirement that comes outside of the contract, and the fact that such requirement was made and the free transportation refused unless this requirement was complied with, the money so collected was collected wrongfully, and that is the reason for my statement that I believed the money was collected unjustly.

Mr. Duffy: One follows the other.

Member De Witt: Yes.

On the 20th day of June, 1914, the Board rendered an opinion and order, reading as follows:

(Heading and Title.)

"This case came before the Board upon a complaint presented on the 28th of May, 1914, by John W. Green, Chief of the Secret Serv-

ice of the City of Manila, and addressed to the Chief of Police of the City of Manila, praying that the Street Car Company be compelled to furnish free transportation to the members of the Bureau of Secret Service under the terms of its franchise and that said Company be prevented from imposing upon the members of that office the prohibitory restriction of being compelled to wear their badges outside their coats in order to ride on the street cars free. It is also requested that the Street Car Company be compelled to refund to the Police Department the total amount expended by said Department for street car transportation for the members of the Secret Service Bureau. This communication was forwarded to the Board of Public Utility Commissioners through the Municipal Board of the City of Manila by the Chief of Police on the 28th of May, 1914, and reached this Board after the Municipal Board had taken the opinion of the City Attorney on the legal points involved. On June 18, 1914, this Board required the Manila Electric Railroad and Light Company to appear before it on the 19th of June, 1914, to show cause why it should not be required to furnish free transportation to the members of the Department of Police of the City of Manila belonging to the Secret Service Bureau.

17 "On the date appointed for the hearing Mr. W. H. Lawrence, Mr. C. N. Duffy, and Mr. J. S. Cairns, appeared for the Street Car Company, and Mr. John W. Green appeared for the Secret Service Bureau of the Police Department of the City of Manila.

"From the evidence taken at the hearing it appears that from May 3, 1905, to May 31, 1914, the Secret Service Bureau of the Police Department of the City of Manila has expended for street car tickets the total sum of P41,927.52.

"Paragraph 16 of the franchise of the Manila Electric Railroad and Light Company provides:

'Members of the Police and Fire Departments of the City of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed.'

"At the hearing the Company admitted that members and employees of the Secret Service Bureau of the City of Manila are members of the Police Department and expressed its willingness to furnish the transportation in question free, provided those members of the Secret Service Bureau using such transportation be required to wear their official badges openly and conspicuously. The contention is that this is a reasonable and proper restriction in order to enable the inspectors and spotters of the Company to check up the conductors. To this Mr. Green answered that the members of his Bureau have always worn their official badges, but that by reason of the very nature of their employments they could not be required to wear their badges openly and conspicuously, thereby disclosing their identity as secret service men and defeating the very purpose of their employment. Mr. Green stated that it was in order to avoid this that the Secret Service Bureau had paid for the transportation

in the past, notwithstanding the provisions of the franchise above quoted.

"It was thereupon suggested to the representatives of the Company that the difficulty of checking the conductors could be solved by furnishing tickets to the Chief of the Secret Service Bureau, to be distributed among his men as needed. The representatives of the Company seemed to admit that the distribution of tickets as suggested would solve the checking difficulty. They objected, however, to the furnishing of tickets free to the members of the Bureau of Secret Service without stating specifically the grounds for such objection. The real grounds probably are that they do not want to furnish the transportation in question free. The suggestion as to tickets, however, discloses that the checking difficulty suggested by the Street Car Company is not an insurmountable one, and the Board so finds.

"The restriction imposed by the Company, requiring members of the Secret Service to wear their badges openly and conspicuously, is an unreasonable and improper restriction. It is equivalent to withholding from the members of the Secret Service the transportation to which they are entitled under the terms of the Company's franchise, and has so resulted. Members of the Secret Service
18 wearing official badges concealed about their clothing in such a way that said badges may be conveniently displayed when required for purposes of identification are 'wearing official badges' and complying with the provisions of the franchise.

"We believe that the provision as to reasonable and proper restrictions inserted in the franchise has reference to such rules as may be adopted for the purpose of preventing the misuse of the transportation accorded under the terms thereof. We have already indicated a simple method whereby this may be done. We propose, however, in our order to leave the Company free to solve the checking difficulty in any way that may appear most convenient to it. We simply propose to require the Company to comply with the terms of its franchise in accordance with the authority conferred upon this Board by Par. (*a*) Sec. 16, of Act No. 2307, as amended.

"We have no jurisdiction to order the restitution of the money unjustly collected, that being a matter for the ordinary courts of justice.

"The Manila Electric Railroad and Light Company is, therefore, ordered to furnish free transportation to the members of the Police Department of the City of Manila belonging to the Secret Service Bureau thereof wearing their official badges, whether openly or concealed about their clothing in such a way that said badges may be displayed to conductors or inspectors on the Company's cars when required to do so for purposes of identification.

"This Order shall take effect the first day of July, nineteen hundred and fourteen."

Manila, June 20, 1914.

On or about the 29th day of June, 1914, a motion for rehearing was presented to the Board by the respondent company, which reads as follows:

(Heading and Title.)

Now comes the Manila Electric Railroad and Light Company, respondent in the above entitled matter, by its undersigned attorneys, and petitions the Board to grant a rehearing in the above entitled matter, to revoke the order heretofore made in this case, and, pending such rehearing and revocation, or other action, to modify the said order by postponing the date upon which it shall become effective for such time as shall enable the Board to rehear the matter and make further order.

This petition is based upon the following grounds:

I.

That the order herein made is in the nature of a writ of mandamus and may lawfully be issued only by a tribunal possessing judicial powers, and that judicial powers and jurisdiction to make such order are not granted to this Board by Act No. 2307 and amendments, nor by any law whatsoever;

II.

That in so far as Act No. 2307, as amended, may purport to grant judicial power to this Board, or power sufficient to warrant and justify the aforesaid order, said act is in contravention of the provisions of the Act of Congress of July 1, 1902, and is ineffective and void as in derogation of the powers and jurisdiction of the Supreme Court and Courts of First Instance of the Philippine Islands;

19

III.

That the aforesaid order is not founded upon due process of law, inasmuch as the parties affected thereby have been afforded a hearing by only one member of this Board, who may not alone make the aforesaid order, and that one of the members authorizing the aforesaid order, and whose concurrence therein is essential to its validity, was not present at the hearing in this matter, and, in fact, did not hear the evidence presented nor the defense of the respondent nor the arguments presented by the parties;

IV.

That even if a hearing before a single member of the Board is sufficient legally to support an order concurred in by others of the Board not present at such hearing, yet the importance of the questions involved renders it expedient and desirable that the parties be granted a hearing by the full membership of the Board, or at least by all members concurring in the order to be made;

V.

That the said order purports to take private property, to wit, the right of respondent to collect fares for transportation in accordance with its franchise, and this without compensation, in contravention of the provisions of the Act of Congress of July 1, 1902;

VI.

That the said order deprives respondent of property without due process of law, in contravention of the provisions of the Act of Congress of July 1, 1902;

VII.

That the said order is erroneous and contrary to law, in so far as it requires respondent to furnish free transportation to members of the police department of the City of Manila while carrying official badges concealed about their clothing, in contravention of the provisions of respondent's franchise;

VIII.

That the said order is erroneous and contrary to law, in so far as it denies to respondent the right to impose the reasonable and proper restriction that members of the police department of the City of Manila, as a condition for enjoying free transportation, shall wear their official badges visibly displayed at all times during such transportation.

LAWRENCE, ROSS & BLOCK,
(Sgd.) By W. H. LAWRENCE,
Attorneys for Manila Electric Railroad and Light Company.

No. 15 Plaza Moraga, Manila.

20 On the 29th day of August, 1914, a decision was rendered on said petition for rehearing, which reads as follows:

(Heading and Title.)

A rehearing was granted the respondent in the above entitled cause, on the sole ground that the respondent desired to address its argument to the entire Board, the evidence in the original hearing having been taken before Commissioner De Witt, under the provisions of Section 12 of Act 2307, as amended.

At the rehearing, counsel for the respondent advanced two propositions in support of his attack on the order of the Board. The first of these was to effect that the Legislature, in conferring upon this Board the general power of enforcing the franchises of public utilities, transcended the powers vested in it under the Act of Congress of July 1, 1902. The second involved the interpretation placed by the Board upon that clause in the respondent's franchise whereby

the respondent undertook to furnish free transportation to members of the Police Department wearing official badges.

The first of these arguments has required careful consideration, inasmuch as it goes to the very foundation of the power of the Board to act in all cases wherein the Courts of First Instance or the Supreme Court of the Philippine Islands might have acted if properly addressed, prior to the enactment of the Philippine Bill.

The argument is that the order made by this Board in this case was, in its nature, a judicial order, a writ of mandamus, such as the Courts of First Instance or the Supreme Court of the Philippine Islands might have issued prior to the enactment of the Philippine Bill, and that, because the Supreme Court of the Philippine Islands has but a limited power of review over the acts of this Board under its organic law, that that Court and the Courts of First Instance would, to that extent, be deprived of their jurisdiction, were the law to be upheld.

The language relied upon in the Philippine Bill is as follows (Section 9):

"That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by the Government of said Islands, subject to the power of said Government to change the practice and method of procedure."

The Supreme Court of the United States has always recognized that there are matters which, by their nature, are necessarily subjects of judicial cognizance, and that there are other matters which, while they may be presented in such form that the judicial power is capable of acting on them, may also be made the subject of administrative control, as the legislature wills. Murray v.
21 Hoboken Land, etc. Co., 18 How. 272, 284, 15 L. Ed. 372; Fong Yue Teng v. U. S. 149 U. S. 698, 715, 37 L. Ed. 905; Interstate Commerce Commission v. Brimson, 154 U. S. 447, 475, 38 L. Ed. 1047.

The visitatorial power of the state over public utility corporations is a matter of the latter class. The state may exercise that power, either through the ordinary judicial machinery, or through administrative bodies charged with that special duty. Until comparatively recently, the former has been the course pursued, but with the growth of public utility service, and by reason of the increasing complexity of the problems involved in determining the relative rights of public service corporations and the public served, the inadequacy of the ordinary judicial machinery has become apparent. The result has been the creation of administrative bodies charged specially with this duty, and vested with such quasi-judicial powers as may be essential to an efficient performance thereof. Unlike the courts, however, these bodies cannot enforce their own rulings, but are compelled to resort to judicial procedure for that purpose. The Interstate Commerce Commission and the various Railroad Commissions, and Public Utility Commissions of the states are such bodies. Reagan v. Farmers' Loan & Trust Co. 154 U. S. 362, 38

L. Ed. 1014; Sabre v. Rutland R. Co. 85 Atl. 693; Atlantic Coast Line R. Co. v. Corp. Com. 206 U. S. 1, 51 L. Ed. 933; Southern Indiana Ry. Co. v. Railroad Com., 172 Ind. 113; King, The Regulation of Municipal Utilities, Chapter X.

It is significant in this connection to note that the validity of the Interstate Commerce Act has never been assailed on the ground that the Commission created thereby was vested with judicial powers in violation of the first section of the third Article of the Constitution of the United States, whereby it is provided that the judicial power of the United States be vested in one Supreme Court and in such inferior courts as Congress may from time to time establish, the judges of said courts to hold office during good behaviour. We cannot believe that it was the intention of the Congress of the United States in requiring the preservation of the jurisdiction of the Courts of First Instance and the Supreme Court of the Philippine Islands to hobble the Government of the Philippine Islands by forbidding it to create administrative offices or bodies with such quasi-judicial functions as may be essential to the proper performance of their administrative duties.

Examples have not been wanting since the enactment of the Philippine Bill of legislation whereby administrative offices vested with quasi-judicial functions have been created. Such an office is that of the Collector of Internal Revenue, who is vested with power to impose administrative fines upon those who violate the internal revenue law through willful and inexcusable carelessness or through petty frauds—such fines being collectible by court action. The validity of this legislation was upheld in Insular Government v. Nico, 14 Phil. Rep. 288.

22 Were the contention of the respondent to prevail, it would be difficult indeed to uphold the validity of Act 496 of the Philippine Commission creating the Court of Land Registration. Our Supreme Court, in discussing the attributes of this Court in City of Manila, v. Lack 19 Phil. Rep. 324, 329, said:

"Before the creation of the Court of Land Registration, jurisdiction to determine the nature, quality and extent of land titles, the rival claims of parties contending therefor, of their registration (in its former sense), and the legality and effect thereof was vested in the Courts of First Instance of the Islands. They had complete and exclusive jurisdiction thereover. By the passage of Act No. 496 these courts were deprived under certain conditions of the power of determining some of these questions and of adjudicating in relation to certain aspects of others. To be sure, the court created by that Act deals with the subject matter in a manner entirely new and with regard to which no court of the Islands previously had power or authority. But it is none the less true that in acting in that manner it resolves questions and determines rights which theretofore had been cognized originally and exclusively by Courts of First Instance. By that Act, therefore, two things occurred worthy of note in the connection in which we are discussing it; First, a court of limited jurisdiction, with special subject matter and with only one purpose, was created. Second, by reason thereof

courts, theretofore of general, original, and exclusive jurisdiction, were shorn of some of their attributes and deprived of certain of their powers; in other words, their power was restricted."

Though a tremendous volume of business has passed through this Court and through the Supreme Court on appeal therefrom, yet the validity of the legislation whereby it was created has never been questioned.

It would be still more difficult to uphold the provisions of Act 1627 of the Philippine Commission depriving the Supreme Court of these Islands of their power to review cases originating in courts of justices of the peace, except in certain cases, yet that legislation has always been upheld. Pavon v. Philippine Islands T. & T. Co., 9 Phil. Rep. 247; Un Pak Leung v. Nigorra, 9 Phil. Rep. 486; Aragon v. Araullo, 11 Phil. Rep. 7.

In those cases wherein our Supreme Court has held invalid certain legislation as a violation of the Section of the Philippine Bill under discussion, the right of the Philippine Legislature to create tribunals exercising concurrent jurisdiction with the Courts of First Instance of the Philippine Islands has been expressly or impliedly upheld. Those cases are Weigall v. Shuster, 11 Phil. Rep. 340 and Barrameda v. Moir, 25 Phil. Rep. 44.

23 In the former of these cases, the defendant, as collector of customs, had taken steps to collect an administrative fine imposed by him in the Court of Customs Appeals, notwithstanding a previous injunction which had issued against him from the Court of First Instance commanding him to desist from further proceeding in any way to levy or collect the fine. In so doing he relied upon the provisions of Act 653 of the Philippine Commission, which purported to confer upon the Court of Customs Appeals exclusive jurisdiction to enforce such fines. It was held that prior to the enactment of Act 653, the proper tribunals to impose punishment for violation of the Chinese Exclusion Act were the Courts, and that, while the Commission might confer the same jurisdiction upon the Court of Customs Appeals, it could not do so to the exclusion of the Courts of First Instance. All through the case the power of the Philippine Legislature to create additional tribunals exercising concurrent jurisdiction with the courts of first instance in those cases of which they may have cognizance is recognized, but it is emphasized that such jurisdiction cannot be made exclusive, thereby ousting the Courts of their jurisdiction as it existed prior to the enactment of the Philippine Bill. The Court said in speaking of the Court of Customs Appeals:

"During its short life, however, it appears to have been endowed with ample authority, in general, so far as the same lay within the gift of the Philippine Commission, to entertain such a controversy as the defendant thus brought before it. (Act No. 355, sections 289 and 290, and Act No. 653) * * *.

"In order to justify his contemptuous Act, it did not suffice for the defendant to show jurisdiction in the Court of Customs Appeals over the subject matter, but in addition thereto that the grant

thereof was exclusive; otherwise the Court of First Instance would not have been deprived of its pre-existing statutory power. It cannot be denied that such was the purport of Act No. 653 which, if it could be sustained, would have ousted Courts of First Instance in these Islands of their jurisdiction over customs cases, which they possessed at the time of the passage of the Act of Congress. That, however, it was not competent for the Philippine Commission to do. * * *

"Therefore, so much of Act No. 653 of the Commission as attempts to confer upon the Collector of Customs or the Court of Customs Appeals exclusive jurisdiction over any cases theretofore cognizable in the courts of record, was ineffective. As already pointed out, preexisting Acts gave the Collector and the
24 Customs court no such exclusive jurisdiction in Chinese exclusion cases which were cognizable in the ordinary tribunals of justice, and for this reason, as well as because it was not competent for the Philippine Commission to change the Act of Congress by substituting an administrative for a judicial procedure, the Court of First Instance had power to impose its order of May 18, 1903, and the defendant is in contempt for his violation thereof."

In Barrameda v. Moir, the same point is emphasized. In this case it was held that an attempt on the part of the Philippine Legislature to confer upon courts of justices of the peace exclusive jurisdiction to try title to land in cases where the value thereof does not exceed two hundred pesos was void as in conflict with the organic law of the Islands, and that the provisions of the same Acts conferring upon courts of justices of peace concurrent jurisdiction with Courts of First Instance to try title to land in cases where the value thereof exceeds P200.00 but is less than P300.00 are supplemental and ancillary to the void provisions and therefore also void. It will be seen that the court impliedly holds that legislation conferring concurrent jurisdiction upon justices of the peace would have been valid, had it not been supplemental and ancillary to the other void legislation.

Even granting for the sake of argument that this Board has vested in it certain judicial powers, an examination of its Organic Act will disclose that the Philippine Legislature made no attempt therein to confer upon this Board such jurisdiction to the exclusion of the courts.

Indeed, that the legislative intent was to the contrary is disclosed by the plain language of Section 36 of the Act itself as follows:

"This Act shall not have the effect to release or waive any right of action by the Board or by any person for any right, penalty or forfeiture which may have arisen or which may arise, under any of the laws of the Philippine Islands, and any penalty or forfeitures enforceable under this Act shall not be a bar to or affect a recovery for a right, or affect or bar any criminal proceeding against any public utility as herein defined, or person or persons operating such public utility, its officers, directors, agents, or employees."

In other words, the jurisdiction of the Court of First Instance and of the Supreme Court is preserved intact by the express terms of

the Act. We do not believe that an Act creating an administrative board possessed of such quasi-judicial powers as may be essential to the efficient performance of its administrative duties, and expressly preserving the jurisdiction of the Courts to entertain all rights of action under any of the laws of the Philippine Islands can be successfully assailed on the ground that it invades the jurisdiction of those courts.

25 We hold, therefore, that this Board may, under its Organic Law, require the respondent corporation to comply with the terms of its franchise because (1) such power is not essentially a judicial power, but, on the contrary is a power properly exercisable by an administrative board, and (2) because the Philippine Bill does not prohibit the conferring of quasi-judicial powers upon administrative bodies so long as the jurisdiction of the courts is preserved intact.

As to the other proposition advanced by the respondent in its attack on the order of the Board, there was nothing brought out at the rehearing whereby the views of the Board as to the obligation of the respondent under its franchise have been changed. That obligation is expressed as follows:

"Members of the Police and Fire Department wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed."

The respondent insists that there should be read into the foregoing, after the word "badges" the words "openly and conspicuously." To this we cannot agree. Such an interpretation would defeat the very purpose of the provision in so far as it applies to members of the secret service of the City of Manila. Such men cannot advertise their employment to the general public.

We think that the language of the franchise is simple and unambiguous. It requires the wearing of the official badge in the usual or customary way. Mr. Green stated at the rehearing that secret service men in the Philippine Islands and in the United States always conceal their official badges. This being the usual or customary way, it is clear that secret service men wearing badges in that way are entitled to free transportation.

On August third, the City Attorney, appearing in behalf of the petitioner in this case, presented a motion asking to withdraw the petition and praying that all proceedings in the case be set aside. This motion was assented to by the Attorney for the Manila Electric Railroad and Light Company on the fifth of August, 1914. On the twentieth of August, 1914, the petitioner appeared by the City Attorney and moved the Board to withdraw the motion dated August 3, 1914. This latter motion was granted, and the Board therefore was relieved of the necessity of deciding whether or not it would have been its duty under the facts presented in this case to proceed of its own motion to require the respondent Company to comply with the terms of its franchise.

The order of the Board of June 20, 1914, is therefore reaffirmed.

Manila, August 29, 1914.

26 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G., No. 10241.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing twenty-five (25) typewritten pages contain a true and correct translation and transcript of the record and proceedings in the Board of Public Utility Commissioners and in the Supreme Court of the Philippine Islands in the above-entitled case.

In witness whereof, I hereunto set my hand and affix the seal of the Supreme Court of the Philippine Islands this 18th day of April, A. D. 1917.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

A. R.

27 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

G. R., No. 10241.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, Petitioner,

versus

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Judgment.

APRIL 15, 1915.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 25th day of March, A. D. 1915,

By virtue thereof it *is* hereby vacated, set aside and annulled the order of the Board of Public Utility Commissioners.

[Seal Corte Suprema, Islas Filipinas.]

(Signed) V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

Certified correct:
V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

A. R.

28 [Stamped] Clerk's Office, Supreme Court, Philippine Islands, Sep. 18, 1916.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G., No. 10241.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Appeal.

The above named respondent, conceiving itself aggrieved by the decree made and entered on the 25th day of March, 1915, in the above-entitled cause, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith; and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers, upon which the decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Manila, P. I., September 18, 1916.

SALVADOR ZAROGOZA,
Acting Attorney-General,
Attorney for the Respondent.

J. A. S.

The foregoing claim of appeal is allowed.

SHERMAN MORELAND,
Associate Justice of the Supreme Court
of the Philippine Islands.

29 [Stamped:] Clerk's Office, Supreme Court, Philippine Islands, Sep. 18, 1916.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G., No. 10241.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Petition for Writ of Error.

To the Honorable Justice of the Supreme Court of the United States:

Comes the above named respondent, by its attorney, and prays that in the record and proceedings had in the above-entitled cause in the Supreme Court of the Philippine Islands against the said respondent on the 25th day of March, 1915, manifest error has happened to the great damage of the said respondent.

Wherefore, said respondent prays for the allowance of a writ of error in said cause and for such other orders and process as may cause same to be corrected by the said Supreme Court of the United States.

Manila, P. I., September 18, 1916.

SALVADOR ZARAGOZA,
Acting Attorney-General,
Attorney for the Respondent.

J. A. S.

30 [Stamped] Clerk's Office, Supreme Court, Philippine Islands, Sep. 18, 1916.

UNITED STATES OF AMERICA
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G., No. 10211.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Assignment of Errors.

I.

The Court erred in setting aside the order of the Board of Public Utility Commissioners of the Philippine Islands.

II.

The Court erred in holding that said order was erroneous.
Manila, P. I., September 18, 1916.

SALVADOR ZAROGOZA,
Acting Attorney-General,
Attorney for the Respondent.

J. A. S.

31 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a cause which is in said Supreme Court of the Philippine Islands, before you or some of you, between the Manila Electric Railroad and Light Company, petitioner, and the Board of Public Utility Commissioners, respondent, a manifest error has happened to the great damage of said respondent, the Board of Public Utility Commissioners, as by its complaint appears.

We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States together with this writ, so that you may have the same in the City of Washington on the 16th day of January next, in said Supreme Court to be then and there held;

that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, thirteenth day of September, in the year of our Lord one thousand nine hundred and sixteen.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT.
Clerk of the Supreme Court
of the Philippine Islands.

32 The foregoing writ of error is allowed this 18th day of September, 1916.

Let a certified copy of the records, testimony, stipulation, and all proceedings herein, be transmitted forthwith to said Supreme Court of the United States.

SHERMAN MORELAND.
Associate Justice of the Supreme Court
of the Philippine Islands.

33 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G., No. 10241.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, Petitioner,

versus

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Citation.

The President of the United States to the Manila Electric Railroad and Light Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty days from the date of this writ, pursuant to a writ of error duly allowed by the Supreme Court of the Philippine Islands, and filed in the Clerk's office of said Court on the 18th day of September, 1916, in a cause wherein The Board of Public Utility Commissioners is plaintiff in error and you are defendant in error, to show cause, if any, why the decree rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief
34 Justice of the United States, this fifth day of December, in the year of our Lord one thousand nine hundred and sixteen.

[Seal] Corte Suprema, Islas Filipinas.]

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of a copy of the within citation is hereby admitted this 6th day of December, 1916.

LAURENCE & ROSS,
Attorneys for the Petitioner The Manila Electric Railroad and Light Company.

35 [Stamped:] Clerk's Office, Supreme Court, Philippine Islands. Filed Mar. 22, 1917.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G., No. 10211.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Now comes the respondent in the above entitled cause by its undersigned attorney, and respectfully requests that an extension of sixty days from the 4th day of April, 1917, be allowed for the transmission and filing of the record of this cause in the office of the Clerk of the Supreme Court of the United States.

Manila, P. I., March 21st, 1917.

QUINTIN PAREDES,
Acting Attorney-General.

Service accepted this 22nd day of March, 1917. No objection is made to the granting of the extension requested by the respondent Board.

LAWRENCE & ROSS,
By W. H. LAURENCE,
Attorneys for The Manila Electric Railroad and Light Company, Petitioner.

J. A. S.

36 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G., No. 10241.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Upon reading and filing the petition of the respondent in the above entitled cause for an extension of time for the filing of the record of said cause in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., and it appearing that the petitioner and defendant in error have consented to such extension, the time for the filing of said record is hereby extended for a period of sixty days from and after the 4th day of April, 1917.

Manila, P. I., March 23, 1917.

SHERMAN MORELAND.
Associate Justice of the Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 26,059. Philippine Islands Supreme Court. Term No. 592. The Board of Public Utility Commissioners, appellant and plaintiff in error, vs. The Manila Electric Railroad and Light Company. Filed July 25th, 1917. File No. 26,059.

Office Supreme Court, U. S.
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JAMES D. MAHER,
CLERK.

-18-

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

No. 230.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS,
Appellant and Plaintiff in Error.

v.

THE MANILA ELECTRIC RAILWAY & LIGHT COMPANY,
Appellee and Defendant in Error.

BRIEF FOR THE BOARD OF PUBLIC UTILITY COMMISSIONERS, APPELLANT AND PLAINTIFF IN ERROR.

PRESS OF GIBSON BROS., INC., WASHINGTON, D. C.

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In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, *Appellant and Plaintiff in Error.*

v.

THE MANILA ELECTRIC RAILWAY & LIGHT COMPANY, *Appellee and Defendant in Error.*

No. 230.

BRIEF FOR THE BOARD OF PUBLIC UTILITY COMMISSIONERS, APPELLANT AND PLAINTIFF IN ERROR.

STATEMENT.

This case is here on writ of error and appeal from the Supreme Court of the Philippine Islands for the review of the judgment of that court vacating, setting aside and annulling an order of the Board of Public Utility Commissioners of those Islands.

On October 20, 1902, the Philippine Commission enacted Act No. 484, entitled "An Act providing for the granting of a franchise to construct an electric street railway on the streets of Manila and its suburbs, and a franchise to construct an electric light, heat and power system in the city of Manila and its suburbs, after competitive bidding."

The 16th paragraph of said Act provided:

> "Members of the Police and Fire Departments of the city of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed. The fares charged children under seven years of age and children under sixteen years of age going to and from school shall not exceed half the ordinary rates of fare. Children in arms shall ride free. The grantee shall have the power to establish reasonable regulations for identifying those children going to and from school."

In 1903 the city of Manila, under and by the authority contained in aforesaid Act, by Ordinance No. 44, granted to Charles M. Swift a franchise for the construction, maintenance and operation of a street railway system for the carriage of passengers for hire in the city of Manila, the said franchise being in the form prescribed by Act. No. 484 (R., p. 1). This franchise was transferred by Charles

M. Swift to the Manila Electric Railway & Light Company, a foreign corporation authorized to transact business in the Philippine Islands, which corporation thereupon became vested with all the rights and privileges and subject to all the duties and restrictions stipulated in the franchise to Mr. Swift.

The appellee, the Manila Electric R. & L. Company, some time in 1905 completed the construction of its line and commenced operations under its franchise. At all times since then members of the Police Department of the city of Manila, in uniform with badge displayed, have received free transportation as provided for in the franchise. However, the Police Department, until the issue herein raised, had not insisted upon its right to have those members of the Police Department who are detailed to secret or plain clothes service carried free. The members of the Secret Service are provided with a badge similar to that worn by the uniformed members of the department, which, for obvious reasons, is not worn openly. During the nine years preceding the hearing by the Board of Public Utility Commissioners the Police Department of Manila city had expended about 40,000 pesos for transportation, the larger portion of which was paid for the transportation of members of the Secret Service Police Force.

In May, 1914, the Chief of the Secret Service attempted to assert the right existing under the franchise, and the company having refused to per-

mit the members of the Secret Service to ride free upon the cars unless they displayed their badges "openly and conspicuously" at all times when on the cars, the matter was presented to the Board of Public Utility Commissioners, created by virtue of Act No. 2307 of the Philippine Legislature, for its determination. By this Act the Board of Public Utility Commissioners was vested with authority to investigate the matter in dispute. Section 14 thereof, providing that:

> "The Board shall have general supervision and regulation of, jurisdiction and control over, all public utilities, and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Act. The term 'public utility' is hereby defined to include every * * * street railway * * * under privileges granted or hereafter to be granted by the Government of the Philippine Islands or by any political subdivision thereof."

Section 15, subsection e, provides:

> "That the Board shall have power * * * after hearing, by order in writing, to fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed thereafter by any public utility as herein defined."

Sections 26, 27 and 28 vested in the Board authority to require the attendance of the company and examination of witnesses. Section 16, subsection a, as amended, provides:

> "The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined:
>
> "(*a*) To comply with the laws of the Philippine Islands and with any provincial and municipal ordinance relating thereto and to conform to the duties imposed upon it thereby or by the provisions of its own charter, whether obtained under any general or special law of the Philippine Islands."

Section 17 provides that no public utility, as here defined, shall

> "(*c*) Adopt, maintain, or enforce any regulation, practice or measurement which shall be unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory, or otherwise in violation of law; nor shall any public utility as herein defined provide or maintain any service that is unsafe, improper or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by said Board."

The Board of Public Utility Commissioners, after legal notice as required by the Act, held a hearing at which the appellee appeared with counsel and

witnesses, and, while admitting its obligation under the law and the franchise, contended that it was not obliged to furnish transportation for members of the Police Department unless the police badge was worn conspicuously at all times when on the cars. (R., p. 12.) It was contended on behalf of the Chief of the Secret Service (R., pp. 7–15), that the restrictions imposed by the company requiring members of the Secret Service to wear their badges openly displayed at all times was unreasonable and contrary to the provision of the statute and the terms of the franchise, and that its real purpose and effect was not to regulate but rather to eliminate the members of the Secret Service from the privileges reserved in the franchise. Evidence adduced at the hearing before the Board established the fact that Secret Service men in the Philippine Islands and the United States always wear their official badges concealed. Upon a consideration of the testimony adduced at the hearing, the terms of the statute and the provision of the franchise, the Board made the following order:

> "The Manila Electric Railway & Light Company is therefore ordered to furnish free transportation to the members of the Police Department of the city of Manila belonging to the Secret Service Bureau thereof wearing their official badges, whether openly or concealed about their clothing, in such a way that

> said badges may be displayed to conductors or inspectors on the company's cars when required to do so for purposes of identification. This order shall take effect the first day of July, 1914." (R., p. 17.)

On or about the 29th day of June, 1914, a motion for a rehearing was presented to the Board by the respondent company, raising the question of jurisdiction. (R., pp. 18–19.)

On August 29, 1914, the Board filed an opinion reaffirming the order made on June 20, 1914. (R., pp. 19–24.)

On September 9, 1914, the defendant filed in the Supreme Court of the Philippine Islands its petition for a judicial review, as provided for in sections 37 and seq., of Act No. 2307, contending that the Board was without jurisdiction to make the order in question. (R., pp. 1–3.)

On April 15, 1915, the Supreme Court of the Philippine Islands granted an order vacating, setting aside and annulling the order of the Board of Public Utility Commissioners (R., p. 25). In its opinion and as ground for its action, the court held that the provisions in the franchise, granted the appellee, that "members of the Police and Fire Departments of the city of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee" contemplated that the badges shall at all times be worn openly and visibly. (R., pp. 3–6.)

From the judgment of the court the appellant and plaintiff in error has presented this appeal and writ of error. (R., pp. 26–27.)

ASSIGNMENTS OF ERROR.

1. The court erred in setting aside the order of the Board of Public Utility Commissioners of the Philippine Islands.

2. The court erred in holding that said order was erroneous. (R., p. 28.)

By the assignments of error, the appellant presents the following contentions:

POINT 1.

The order of the Board of Public Utility Commissioners was an administrative order, warranted by the evidence and was based upon a correct interpretation of paragraph 16 of Act No. 484 of the Philippine Commission.

(*a*) The order made by the Board requiring the defendant company to comply with the provisions of its charter was clearly within the Board's discretionary power.

POINT 2.

The Public Utility Act of the Philippine Legislature does not violate the Organic Act, the Act of Congress of July 1, 1902,

(*a*) By impairing the jurisdiction of the courts of the Philippine Islands, or

(*b*) By impairing the obligation of a contract.

POINT 1.

The order of the Board of Public Utility Commissioners was an administrative order, warranted by the evidence, and was based upon a correct interpretation of paragraph 16 of Act No. 484 of the Philippine Commission.

Paragraph 16 of Act No. 484 of the Philippine Commission in part provides:

> "Members of the Police and Fire Departments of the city of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed."

And this provision of the statute is contained in the franchise granted to the appellee.

The order, which was passed by the Board and which was vacated by the judgment of the court below, is in the following terms:

> "The Manila Electric Railway & Light Company is therefore ordered to furnish free transportation to the members of the Police Department of the city of Manila belonging to the Secret Service Bureau thereof wearing their official badges, either openly or concealed about their clothing, in such a way that said badges may be displayed to conductors or inspectors on the company's cars when required to do so for the purposes of identification. This order shall take effect the first day of July, 1914."

The court below held that the Board was without the authority to pass the order, and as ground for its decision stated that the provisions in the franchise providing that members "of the Police and Fire Departments of the city of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee," contemplated that the badges shall at all times be worn openly and visibly. (R., pp. 3–6.) This conclusion of the court below is entirely unwarranted by the terms of the statute, and is completely at variance with the intention of the legislature. The provision of the statute, which is incorporated in the franchise, does not declare that the badges shall be worn "openly and conspicuously," and the court below, without warrant, has read "openly and conspicuously" into the statute. That this interpretation of the statute and the franchise is erroneous is perfectly apparent upon even the slightest reflection. The wearing of the badge manifestly is merely to show who is entitled to the privilege of riding without charge, and can have no purpose other than that of identification. If this purpose of identification is served by displaying the badge—and it cannot be doubted that it is—the requirement of the statute in fact and in law is complied with. It is a matter of common knowledge that by the nature of his employment, any member of the Secret Service is obviously precluded from advertising his status by wearing the official

badge "openly and visibly," either when walking or when riding upon a street car. Obviously the effect of a requirement thus to wear the badge would be to remove them from the class of Secret Service officials, and defeat the very purpose for which a detective force is organized and maintained.

No distinction is made by the statute and the provision of the franchise between the various members of the Police Department, and it was not contemplated by the legislature that any should be made. The legislature knew, and legislated in the light of the knowledge, that to require a member of the Secret Service to wear his official badge "openly and conspicuously" would be to destroy his usefulness to society as a member of the Secret Service police. It cannot be believed that the legislature ever contemplated that the statute, which admittedly applies to all members of the Police Department, should have this result. Indeed, after all, the question of where a police badge shall be worn in order that the interests of the public may be best served is for the determination of the Chief of Police, and the statute does not seek to limit him in determining this question. The street railway company, by an unwarranted regulation, has said in effect, and this has been upheld in the court below: "If you desire to ride free you must abandon all idea of concealing your identity, and advertise to everyone on the cars that you are

a police officer, irrespective of its effect upon the public interests."

The appellee, as shown by the record, never declined to carry a Secret Service man on the ground that he was not a policeman, thus admitting that he was included within the claim of those entitled to the provision of the franchise, but made an effort to eliminate such Secret Service man from the benefits of the statute by an unreasonable and unnecessary illegal regulation, which upon its face was contrary to public policy.

The court below asserted that it was influenced in its decision because the Manila Police Department had delayed asserting the right alleged to be given under Act No. 484 to have its Secret Service operators transported free without wearing their official badges "openly and visibly." The error into which the court below has fallen is in regarding the question presented as one involving the interpretation of a contract, in the interpretation of which it might be aided by the conduct of the parties in respect thereto, whereas the question involved is one concerning the interpretation of a law. The mere nonassertion of the right by the public given by the law does not serve to change the meaning of the law or otherwise affect the clear intention in the mind of the legislature at the time the statute was enacted. In the interpretation of the statute, it is submitted, the intention of the

legislature must control. In this connection the court below said:

> "The intention of the legislature as evidenced by the amendment (and the legislature was simply trying to set down what the parties had agreed on), together with the practical construction adopted by the parties and acted on for a long period of time, is sufficient to constrain us to accept the construction thus practically given and to overrule that adopted by the Board of Public Utility Commissioners."

It is extremely difficult, upon the facts in the case, to understand how the court deduced that the legislature was "simply trying to set down what the parties interested had agreed on." The parties interested in this controversy are The People of Manila city and the Manila Electric Railway & Light Company. When Act. No. 484 was passed, on October 20, 1902, it passed no franchise to the Manila Electric Railway & Light Company, but merely prescribed the form of franchise that might be granted to some then undetermined person or persons after competitive bidding. In fact, the record does not show that the street railway company had a corporate existence at the time Act No. 484 was passed. Indeed, a franchise was not even granted by Municipal Order No. 44 to the present company, but to an individual named Chas.

M. Swift, and it is clear that the corporation to whom he later assigned the franchise was formed thereafter. This was one of the plain requirements controlling the granting of the franchise. Act No. 484, paragraph 2, part 3-C, Public Law, page 39, provides:

> "It shall be a condition of the enjoyment of these franchises that the person or persons to whom they may be originally granted, under the provisions of this Act, shall, before April 1, 1903, form a corporation under the laws of the Philippine Islands, hereafter to be passed, or under the laws of the United States, or any State thereof, and whose charter shall comply with the laws prevailing in these Islands, to take over these franchises and to perform the terms thereof to be performed by the grantee thereof, * *."

This section clearly required that the corporation be formed after the granting of the franchise, and the defendant corporation undoubtedly was.

Further evidencing the intent of the legislature in this connection, paragraph 5, page 40, Public Law, states:

> "The corporation *to be formed* by the persons originally receiving the grant for the purpose of maintaining and operating these franchises * * *."

Section 3, page 40, of the same Act provided that immediately upon its passage it should be the duty

of the Municipal Board to advertise that the franchise would be granted upon competitive bidding, and provided, *inter alia*, that:

> "* * * Due advertisement of competitive bidding for the proposed franchise shall be made in three newspapers printed in the English language and two printed in the Spanish language in the city of Manila, and in two newspapers in the city of New York; in one newspaper in the city of Chicago, and in one newspaper in the city of Washington, by two insertions per week for six weeks after the passage of this Act, and a single inserton per week for the subsequent six weeks, * * * a weekly insertion for six weeks following the passage of this Act in a leading street railway journal in the United States. * * * The Municipal Board, with the consent of the Advisory Board and the approval of the Philippine Commission, shall determine, in its discretion, the bid most favorable to the city and the public, and award the franchise, * * * to the person or persons making such bid. * * *"

The foregoing demonstrates that ample opportunity for submitting bids was furnished, not only to the people of the Philippine Islands, but to the people of the United States as well, and that the successful bidder or bidders were required to incorporate after franchise was awarded. It is clear,

therefore, that the Philippine Commission had no understanding with the then absolutely nonexistent, undetermined corporation, restricting its clearly expressed statutory intention.

The alleged practical construction adopted by the parties, we repeat, in no wise serves as an aid in interpreting the law. Their act cannot be regarded as expressing the legislative intent. In the enactment of the law, it is to be assumed that the Philippine Commission was acting in the best interests of the People of Manila and the general public, and in thus serving the interests of the public intended to place no restriction upon the grant of free transportation to all members of the Police Department, and that therefore the provision appearing in the paragraph, "wearing official badges," was intended solely to afford a means of identifying the members of the police force. If the official badge is exhibited to the conductor or inspector upon the car, as provided by the order of the Board of Public Utility Commissioners, the fact is thereby established that the officer so doing is a member of the Manila police wearing an official badge, and under the statute, entitled to free transportation. It is submitted that any other interpretation would lead to an unreasonable conclusion. A passenger who has paid his transportation on any street car is not thereafter required to exhibit or wear a certificate to the effect

that he has done so. It is the conductor's duty to remember who has paid him. It would surely be as unreasonable and unwarranted to require a Secret Service operator, who after having identified himself by displaying his badge to the conductor, openly to wear his badge at all times when in the car. The requirement of the statute, after all, is that an official badge shall be worn, and the statute does not point out where the badge shall be worn, leaving that to be determined by those charged with the duty of protecting the public interests in the enforcement of law and order. The badge which is a means of identification, having been displayed to the conductor by the officer, the purpose of the statute is served. The requirement that a badge shall be worn was evidently for the protection of the street car company, since it would serve to inform it of the persons who are entitled to the privilege of free transportation, and thereby protect the company from the acts of impostors.

The other consideration stated by the court below which influenced it in reaching its conclusion was that in its opinion the history of the enactment of Act No. 484 and its amendments justified the court in its conclusion that it was not primarily the intention of the legislature to require the company to carry free of charge all of the police force. The court below stated (R., pp. 5–6), that in the minutes of the public sessions of the Commission, September 1,

1902 to September 1, 1903, which refer to the passage of that Act, it is shown that when the bill came to its final reading the clause in question read as follows:

> "Members of the Police and Fire Departments of the city of Manila shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed."

This was amended by inserting after the word "Manila" the words "wearing official badges." It is impossible to conceive how the court below should have held that the amendment assisted it in reaching its conclusion. It is quite apparent that the amendment affords evidence of a contrary intention upon the part of the Philippine Commission. The words "wearing official badges" manifestly was intended as a protection to the successful bidder for the franchise; affording a means to the bidder of identifying the person who was entitled to the privilege of riding without charge. Concededly if the privilege given by the statute, as interpreted by the court below requiring that the badges be worn openly and conspicuously, were availed of the public usefulness of a member of the Secret Service would be destroyed. Under this interpretation, the city of Manila, in the public interest and to preserve their usefulness, would be compelled to pay the fare of all the members of the Secret Service—certainly a thing not contemplated by the statute.

Grants of franchises are to be strictly construed in favor of the State and against the grantee, and if a franchise is susceptible of two meanings, it must be construed in the way that works the least harm to the State. *Turnpike Road Company* v. *Landord*, 164 U. S. 578. Admitting, for the sake of argument, that the franchise under review was susceptible of two meanings, it was the plain duty of the court below to apply an interpretation that would most benefit the public, The People of Manila city. In the case of *Stein* v. *Bienville Water Supply Co.*, 141 U. S. 67, the construction of a franchise was considered by the court. The question involved was whether a municipality granting a contractor the sole privilege of supplying it with water from a designated source could grant to another contractor a privilege to supply it from a different source. It was a case in which two radically different interpretations could be placed upon the franchise, and while the one in favor of the grantee was a construction easily reached, nevertheless the court held that the construction must be in favor of the State. In delivering the opinion of the court, Mr. Justice Harlan said:

> "* * * While it is the duty of the courts not to defeat the intention of the parties to a contract by a strained interpretation of the words employed by them, *it is a settled rule of construction* that 'in grants by the public

> nothing passes by implication,' and 'if on a fair reading of the instrument, *reasonable doubts arise as to the proper interpretation to be given to it*, those doubts are to be solved in favor of the State; *and where it is susceptible of two meanings, the one restricting and the other extending*, the powers of the corporation, *that construction is to be followed which works the least harm to the State*."

In the present case the construction favorable to The People of Manila city was the one which would extend free transportation to all members of the Police Department. This was the construction fairly warranted by the testimony and data before the Board and was properly adopted by it.

At the hearing there was no evidence presented from which an inference might be drawn that there was any question in the mind of the appellee as to the right of Secret Service men to free transportation under the franchise. The reason given for the regulation made by the appellee that badges be worn openly and visibly, at all times when on the cars, was that it was for the purpose of identification. This purpose of identification, as has been pointed out, is secured by displaying the badge to the conductor when required to do so.

The evidence established the fact that members of the Secret Service in the Philippine Islands and the United States always wear their official badges

concealed; and the Board of Public Utility Commissioners, in its opinion, said:

> "We think the language of the franchise is simple and unambigous. It requires the wearing of the badge in the usual or customary way. This being the usual or customary way, it is clear that Secret Service men wearing badges in that way are entitled to free transportation." (R., p. 24.)

The conclusion is irresistible that the badge was intended as a method of identification, it could have been for no other purpose, and that the plain requirement of the provision is complied with if the badge is displayed to the conductor. Any other conclusion nullifies the clear intent of the Philippine Commission to secure free transportation for all members of the police force. Had the legislature intended that members of the police force should always wear the official badge openly and visibly it would have so specified in the Act prescribing the obligation. It is submitted that clearly it was the intention of the legislature that this should not be done. A thing within the intention of the makers of the statute is as much within the statute as if it were actually written therein. *U. S.* v. *Babbitt*, 1 Black 55. Legislative Acts are to be interpreted according to the words of the legislature. *Wilkinson* v. *Leland*, 2 Peter. 627; *Priestman* v. *U. S.*, 4 Dall. 28.

The order made by the Board requiring the appellee to comply with the provisions of its charter was clearly within the Board's discretionary power.

The Board of Public Utility Commissioners of the Philippine Islands was created by Act No. 2307 of the Philippine Legislature, and vested with powers prescribed for similar boards in the United States. Section 14 of the said Act prescribed:

> "The Board shall have general supervision and regulation of, jurisdiction and control over, all public utilities, and also over their property, property rights, equipment, facilities and franchises, so far as may be necessary for the purpose of carrying out the provisions of this Act. The term 'public utility' is hereby defined to include every * * * street railway * * * under privileges granted or hereafter to be granted by the Government of the Philippine Islands or by any political subdivision thereof."

The appellee is a public utility as defined by the Act, and is subject to the supervision and regulation delegated to the Board. Section 15 (E) provides:

> "The Board shall have power, * * * after hearing, by order in writing, to fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed thereafter by any public utility as herein defined."

Under the Act of Congress approved July 1, 1902, the Philippine Organic Act, the legislative authority of the Philippine Islands was authorized to adopt rules and regulations under which provincial and municipal governments might grant public utilities. The pertinent portions of Section 74, relating thereto, are as follows:

> "That the Government of the Philippine Islands may grant franchises, privileges, and concessions, including the authority to exercise the right of eminent domain for the construction and operations of works of public utilities and service, and may authorize said works to be constructed and maintained over and across the public property of the United States, including streets, highways, squares, and reservations, and over similar property of the government of said islands, *and may adopt rules and regulations under which the provincial and municipal governments of the islands may grant the right to use and occupy such public property belonging to said provinces or municipalities.*"

The authority thus conferred upon the legislative body of the Philippine Islands to exercise control over public utilities was, by it, legally delegated to the Board of Public Utility Commissioners by Act No. 2307. Accordingly, in the case at bar, the Commissioners were authorized by this act to pro-

mulgate rules and regulations for carrying out a law that defined the duties of the appellee. That it was within the province of the legislature to confer this power is well established.

There are no constitutional objections arising out of the doctrine of the separation of the powers of the government to the creation of administrative bodies within certain limitations, to adopt rules and regulations and authorize them to see that the legislative will expressed in statutory form is carried out by the persons and corporations over whom such boards may be given administrative powers. *Miller* v. *New York*, 109 U. S. 385; *Union Bridge Co.* v. *United States*, 204 U. S. 364; *United States* v. *Grimaud*, 220 U. S. 506; *Blue* v. *Beach*, 155 Ind. 121; *Reed* v. *Dunbar*, Secretary of State, 69 Pac. 451; *State Public Utilities Co. et al.* v. *Chicago and W. Y. Ry. Co.*, 114 U. S. 325; *Manufacturers Light & Heat Co.*, 215 Fed. 940; *Reed* v. *Dunbar*, 41 Oregon 501. In the latter case the court said:

> "Every law, after it is enacted, however, must be executed by some one charged with that duty; and unless the constitution otherwise especially directs, the legislature may vest such power in a Board or Commission, and give to that board or commission the right to appoint subordinate officers or agents to carry out the legislative will."

And power may properly be vested in administrative officers of an administrative board to determine when particular cases do or do not fall within the scope of the statutes which regulate or prohibit matters under the control of the legislature. *Union Bridge Co.* v. *United States, supra.* In that case Mr. Justice Harlan, speaking for the court, said:

> "If the principle for which the defendant contends received our approval the conclusion could not be avoided that executive officers, in all the departments, in carrying out the will of Congress, as expressed in statutes enacted by it, have, from the foundation of the National Government, exercised, and are now exercising, powers as to mere details, that are strictly legislative or judicial in their nature. This will be apparent upon an examination of the various statutes that confer authority upon executive departments in respect of the enforcement of the laws of the United States. Indeed, it is not too much to say that a denial to Congress of the right, under the Constitution, to delegate the power to determine some fact or the state of things upon which the enforcement of its enactment depends, would be 'to stop the wheels of government' and bring about confusion, if not paralysis, in the conduct of the public business.''

A certain policy or rule having been prescribed by statute, matters of detail in carrying out the executive

duty of giving effect to the legislative will may be left to boards or commissioners. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194; *Red "C" Oil Mfg. Co.* v. *North Carolina Board of Agriculture*, 222 U. S. 380; *St. Louis Etc. R. Co.* v. *Taylor*, 210 U. S. 281; *Murray* v. *Louisiana*, 163 U. S. 101; *Reagan* v. *Farmers L. & T. Co.*, 154 U. S. 362; *Lehigh Valley R. Co.* v. *United States*, 234 Fed. 682.

In pursuance of its authority to regulate railroads, warehouses and other public utilities, the legislature may by statute prescribe general rules and entrust their enforcement to a commission, which may also be given power to make further rules and regulations not in conflict with the statute. *Stone* v. *Farmers L. & T. Co.*, *supra; Chicago, etc., R. Co.* v. *Peelts*, 94 U. S. 155; *Minnesota* v. *Illinois*, 94 U. S. 113; *Mfg. Light, etc., Co.* v. *Ott*, 215 Fed. 94; *Louisville, etc., R. Co.* v. *Siler*, 186 Fed. 176; *Oregon, etc., R. Co.* v. *Campbell*, 230 U. S. 254; *Reagan* v. *Farmers L. & T. Co.*, *supra.*

Boards or public service commissions enjoy certain quasi-judicial powers, such as subpoenaing witnesses, administering oaths, and taking testimony, and, as a general proposition, their orders or findings are not disturbed by the court unless it is apparent that there was not sufficient evidence upon which to base the findings or that the right of the respondent to a fair and impartial hearing was not respected.

Gardner v. *Bonestel*, 180 U. S. 362; *Hartman* v. *Warren, et al.*, 76 Fed. 157; *Bartlett* v. *Kane*, 16 Howard 272; *U. S. Ex Rel Funard* v. *Watchorn*, 164 Fed. 152; *U. S. Ex Rel Barlin* v. *Rodgers*, 191 Fed. 972; *U. S.* v. *Greenwalt*, 213 Fed. 901; *The Japanese Immigration Case*, 189 U. S. 86; *Nishimura Ekiu* v. *U. S.*, 142 U. S. 651; *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 299.

In its delegation of power to the Board of Public Utility Commissioners the Philippine Commission authorized the Board to do what the legislature, had it so elected, might have directly done, and the order of the Board has all the force and effect of a legislative statute. *Osborn Commissioner* v. *Wabash Ry. Co.*, 123 Mich. 669; *State* v. *Minneapolis Ry. Co.*, 80 Minn. 191; *State* v. *Fremont, etc., R. Co.*, 22 Neb. 313; *State* v. *Jacksonville Terminal Co.*, 41 Fla. 377; *Campbell* v. *Chicago R. Co.*, (Iowa) 17 L. R. A. 443, *City of Chicago, et al.*, v. *O'Connell et al.*, 278 Ill. 591.

We repeat that it is perfectly manifest that the statute required the free transportation of the members of the Secret Service, and that the order of the Board based thereon was correct and valid.

It is submitted that the Board, under the broad grant of power given it by section 15, subsection 2, of Act No. 2307, even in the absence of any statutory or franchise provision requiring free transportation, might require the appellee to comply with an

order requiring it to furnish free transportation to members of the Police Department of the city of Manila that would be justified on the ground of public policy. *Compaignie Francaise, etc.*, v. *State Board of Health*, 51 Louisiana Annual 645; *City of Chicago* v. *O'Connell*, 278 Ill. 591, 116 N. E. 210; *Stone* v. *Mississippi*, 101 U. S. 814; *Richmond, etc., R. Co.* v. *Richmond*, 96 U. S. 521; *Butchers Union Co.* v. *Crescent City, etc.*, 111 U. S. 746; *Howell* v. *Pennsylvania*, 127 U. S. 678; *McGuire* v. *Chicago B. & Q. R. Co.*, 131 Iowa 340. In the State of New Jersey a statute had been passed requiring a street railway to grant free transportation to public officers while engaged in the performance of their duties (*State* v. *New Jersey*, 84 Atl. 1057). The court, in sustaining the validity of the Act, said:

> "The statute may fairly be regarded as an exercise of the police power of the State. Policemen are required to be on street cars in the execution of their duties to preserve peace, to enforce ordinances, and to prevent or detect crime."

Transportation of members of the Police Department would not so vitally affect public safety in a large American city as in the city of Manila, because of the many other means of rapid transportation found in the former. The exercise of police power in one place, *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, might not be justified in another, as

its exercise depends upon the circumstances of the place wherein it is applied. Therefore it is submitted that the order of the Board could be abundantly justified as an exercise of the police power.

However, in the instant case we are not concerned with the issuance of an independent order based solely upon the ground of public policy, but with an order requiring the appellee to comply with the duties imposed upon it by the statute, and the provisions of its own charter. Section 16, (subsection A) of Act No. 2307 of the Philippine Legislature, provides:

> "The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined: (*a*) to comply with the laws of the Philippine Islands and of any provincial and municipal ordinance relating thereto and to conform to the duties imposed upon it thereby or by the provisions of its own charter, whether obtained under any general or special law of the Philippine Islands."

Thus is given a broad and plain grant of powers to the Board of Public Utility Commissioners, which the Philippine Legislature had created, to require the appellee to comply with the provisions of the law and of its charter. Therefore, the order made by the Board was clearly within the scope of the Board's discretionary power conferred by the legis-

lature. In fact, the jurisdiction of the Board of Public Utility Commissioners to hear and determine the question presented was not disputed by the appellee until the Board had made an order directing compliance with the statutory provision.

The Record shows (R., p. 7), that on June 18, 1914, an order was issued requiring the appellee to appear before the Board of Public Utility Commissioners to show cause why it should not be required to furnish free transportation to the members of the Department of Police of the city of Manila belonging to the Secret Service Bureau thereof. In pursuance of said order, a hearing was held on the 19th day of June, 1914, before a member of the Board, at which the appellee was represented by its president, assistant general manager and counsel. A full opportunity was afforded for the taking of testimony, and it nowhere appears that the appellee was denied the fullest opportunity to present its contentions, nor was the jurisdiction of the Board in any way questioned at this hearing.

Indeed, it is not contended by the appellee that it was not accorded a full and fair hearing. At this hearing the appellee admitted that members and employees of the Secret Service Bureau are members of the Police Department and expressed its willingness to furnish them transportation, providing they be required to wear their official badges "openly

and conspicuously." The evidence adduced at this hearing established the fact that Secret Service men in the Philippine Islands and the United States always conceal their official badges, and that the very nature of their duties require that this should be done. The real question then that was presented for the consideration of the Board was whether the Secret Service men, who were admittedly entitled to free transportation because they always wore the official badge, could be deprived of this privilege to the great injury of the public and public interests, by a regulation of the appellee that prescribed for them a method of wearing it which would serve to make impossible the proper performance of their duties. The Board held that the members of the Secret Service could not be so deprived of this privilege conferred by the statute, and the interpretation placed upon the statute by the Board, we submit, was in accord with the purpose of the Act and permitted the intent of the legislation to be carried out.

POINT II.

The Public Utility Act does not violate the Philippine Organic Law, the Act of Congress of July 1, 1902, (a) by impairing the jurisdiction of the courts of the Philippine Islands, or (b) by impairing the obligation of a contract.

(a) *The Public Utility Act does not impair the jurisdiction of the courts of the Philippine Islands, and the order issued by the Board of Public Utility Commissioners was a valid administrative order.*

It was argued by the appellee in the court below, and the argument may be pressed in this court, that the Public Utility Act impairs the jurisdiction of the courts of the Philippine Islands under the Organic Law, Act of Congress of July 1, 1902, and that the order made by the Board of Public Utility Commissioners is a judicial order and therefore it was beyond the power of the Board to pass the order. It is submitted that these contentions are obviously without merit. It is perfectly clear that the Public Utility Act does not impair the jurisdiction of the courts of the Philippine Islands, nor is the order in question a judicial one. If this argument could prevail, it would nullify the power that has been given almost universally to public service commissions.

A public utility commission is regarded by the courts not as a court, but as a legally constituted administrative board, vested with discretionary authority to make and enforce rules and regulations to carry out the legislative intent. That the legis-

lature of the Philippine Islands was authorized by the Organic Law of the Philippine Islands to enact the Public Utility Act cannot be questioned. Section 74 of the Philippine Organic Act provides:

> "That the Government of the Philippine Islands may grant franchises, privileges, and concessions, including the authority to exercise the right of eminent domain, for the construction and operation of works of public utility and service, and may authorize said works to be constructed and maintained over and across the public property of the United States, including streets, highways, squares, and reservations, and over similar property of the Government of said Islands, *and may adopt rules and regulations under which the provincial and municipal governments of the Islands may grant the right to use and occupy such public property belonging to said provinces or municipalities.*"

Thus it is seen that ample authority by this section is conferred upon the legislative body of the Philippine Islands to exercise control of and deal with the subject of public utilities. In the exercise of the power thus conferred, the Philippine Legislature delegated to the Board of Public Utility Commissioners, by Act No. 2307, the authority to regulate and control public utilities. In the light of the liberal principles uniformly applied by this court in passing upon the constitutionality of statutes, this

Act was clearly warranted by the Organic Act. To justify the court in holding that it violates any provision of the Organic Law, it must be shown that it does so plainly and in a manner as to leave no reasonable doubt. This principle is emphasized by this court in the case of *Missouri, Kansas & Texas Railway Co.* v. *May*, 194 U. S. 267, in which the court said:

> "Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."

In *McGuire* v. *Chicago, B. & Q. R. Co.*, 131 Iowa 340, in discussing this question, the court said:

> "A legislative Act may be declared unconstitutional only when it violates that instrument clearly, palpably, plainly and in a manner as to leave no reasonable doubt."

It was urged by the appellee in the court below that Act No. 2307 of the Philippine Legislature is in derogation of the jurisdiction conferred upon the courts by section 9 of the Organic Act, which provides:

> "That the Supreme Court and courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore

> provided, and such additional jurisdiction as shall hereafter be prescribed by the government of said Islands, subject to the power of said government to change the practice and method of procedure.''

That there could be no clearer declaration reserving the jurisdiction thus conferred upon the courts of the Philippine Islands than that contained in sections 36 and 32 of Act No. 2307, as amended, of the Philippine Legislature, cannot be conceived. section 36 of this Act provides:

> ''This Act shall not have the effect to release or waive any right of action by the Board or by any person for any right, penalty or forfeiture which may have arisen or which may arise, under any of the laws of the Philippine Islands, and any penalty or forfeiture enforceable under this Act shall not be a bar to or affect a recovery for a right, or affect or bar any indictment against any public utility as herein defined, or person or persons operating such public utility, its officers, directors, agents, or employees.''

Section 32 of said Act, as amended, expressly provides, *inter alia*, that:

> '' * * * Observance of the orders of the Board may be enforced by mandamus, or injunction in appropriate cases, or by suit in equity to compel the specific performance of the order or orders so made, or of the duties imposed by law upon such public utility.''

Section 37 of said Act provides for the review by the Supreme Court of the Philippine Islands of any order made by the Board.

The order of the Board is an administrative order and not judicial in the sense that it is enforceable by itself, and therefore does not attempt to restrict the jurisdiction of the courts. To enforce its order the Public Utility Board must bring an action in the courts as provided by Section 32 of Act No. 2307, such action taking the form of mandamus, injunction, or specific performance. A complaint must be filed in the courts, and the order of the Board is only to be taken as evidence of the facts investigated by it. In these circumstances, surely it cannot be contended that the Act limits the original jurisdiction of any court in the Philippine Islands when it expressly provides that in the enforcement of the order one may go to the court to bring an original action. Thus we see that the Public Utility Board does not enjoy concurrent jurisdiction. It is subordinate to, and must always go into the courts for the enforcement of its order.

> "Concurrent jurisdiction means equal jurisdiction having the same authority in dealing with the same subject matter. *Rogers* v. *Bennett*, 2 Okla. 553; *Hercules Iron Works* v. *Elgin G. E. Ry. Co.*, 141 Ill. 491."

In a judicial sense the Board of Commissioners is not attempted by the Public Service Act to be

given any jurisdiction affecting or impairing the jurisdiction of the courts of the Philippine Islands. And the terms of that Act do not in any respect conflict with provisions of the Organic Act touching the jurisdiction of the courts of the Philippine Islands, since it is necessary to resort to the courts for the enforcement of the order of the Board.

Whether the action of a board is called an order or judgment does not render it judicial, nor does it make it a judicial order. It is not the name, but the character of the proceeding which determines whether a given order is an administrative or judicial one. In *W. U. Tel. Co.* v. *Miss. R. Com.*, 21 Sou. Rep. 17, in discussing this question, the court said:

> "The findings and determination of matters committed to the railroad commission by it were not final and conclusive. * * * It is a mere administrative agency, although in some respects it exercises quasi-judicial power. But at last the reasonableness, and consequently the lawfulness, of its determination is left subject to judicial inquiry and decision. If a common carrier required by the commission to do an act, is of the opinion that the requirement is a violation of its legal rights, it may refuse compliance * * * But it takes the risk of coming under all of the penalties and liabilities declared by the statute * * *. The statute in express language so provides * * *."

In the case of *Kentucky and Indiana Bridge Co.* v. *Louisville & Nashville Railroad Co.*, 2 L. R. A. 289, decided by the United States Circuit Court, the Interstate Commerce Commission issued an order enjoining the defendant from interchanging traffic with the petitioner. The constitutionality of the Act was questioned on the ground that the Interstate Commerce Commission had been given judicial power thereunder to make its order a judgment of a court. Sections 12 to 18 of the Act were considered which embodied features of judicial proceedings involving petition, notice, answer, issue of subpoena, hearing and written report. In passing upon the question, the court said:

> "While the commission possesses and exercises certain powers and functions, resembling those conferred upon and exercised by regular courts, it is wanting in several essential constituents of a court. Its action or conclusion upon matters of complaint brought before it for investigation, and which the Act designates as the 'recommendation,' 'report,' 'order,' or 'requirement,' of the Board, is neither final nor conclusive; nor is the Commission invested with any authority to enforce its decision or award * * *. We are clearly of the opinion that the Commission is invested with only administrative powers of supervision and investigation, which fall far short of making the Board a court or its

> action judicial in the proper sense of the term. The Commission hears, investigates, and reports upon complaints made before it, involving alleged violation of, or omission of duty under the Act; but subsequent judicial proceedings are comtemplated and provided for, as the remedy for the enforcement, either by itself, or by the party interested * * *. The functions of the Commission are those of referees or special commissioners, appointed to make preliminary investigation of, and report upon, matter for subsequent judicial examination and determination * * *."

In the case at bar, it is to be noted that section 32 of the Public Utility Act provides for judicial proceedings for the enforcement of the order of the Board of Public Utility Commissioners. The order of the Board of Public Utility Commissioners is not a judgment. A judgment is the final determination of the rights of the parties in an action of which a writ of execution may be issued. The order of the Board is not final and enforceable by virtue of an execution; hence it lacks the characteristics of a judgment or a final adjudication of the rights of parties. *Broder* v. *Superior Court of Mono County*, 37 Pac. 143; *Edwards* v. *Hellings*, 33 Pac. 799; *Little* v. *Atchison T. & S. F. Ry. Co.*, 53 S. W. 331; *Houston* v. *Clark*, 13 Pac. 739; *Russel Stebbins, et al.*, v. *Niles*, 21 Miss. 307; *Russell* v. *St. Louis & S. Ry. Co., et al.*, 55 S. W. 454; *Voisin* v. *Com. Mut. Ins. Co.*, 25 N. E. 325.

In *Louisville & Nashville R. Co.* v. *Brown*, 123 Fed. 947, a case pertinent to the subject of inquiry, the Railroad Commission had ordered a reduction in the prospective rates of carrying passengers on the complainant's railroads and had ordered it to observe said reduced rates. The chief contention of the respondent was that as the legislative Act which created and defined the powers and authority of the Railroad Commission vested in the commission judicial powers to do or enforce the performance of any function, duty or power conferred upon them by the Act to the exercise of which judicial power is necessary the Commission was a State court, and as such exempt from the interference of a Federal court by injunction under Section 720 of the Revised Statutes of the United States. The court, in considering this question, said:

> "An inspection of the Act of the legislature of the State of Florida creating the railroad commission shows that, as is usual in such cases, the commission is vested with executive, legislative and quasi-judicial powers, but does not show that the commission is to any degree created and established as a court for the final adjudication and determination of the rights of individuals, or the rights of property. Whatever may be the Act, order, or proceeding of the commission, whether of an executive, legislative, or quasi-judicial character, the commission's findings are only prima facie

> determined and can only be enforced in the courts; and in every instance the rights of individuals or the rights of property concerned can be re-examined and determined. * * *"

In *Stone* v. *Farmers' Loan & Trust Co.*, 116 U. S. 307, the court held that a commission is an administrative board created by the State for carrying into effect the will of the State as expressed by its legislation.

It is settled by the decisions of this court that matters which by their nature are necessarily subjects of judicial cognizance may also be made the subject of administrative control as a legislature wills. *Murray* v. *Hoboken Land Co.*, 18 Howard 272; *Fong Yue Ting* v. *United States*, 149 U. S. 698; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447. Unlike the courts, however, these bodies cannot enforce their own rulings, but are compelled to resort to judicial proceedings for that purpose. *Reagan* v. *Farmers Loan & Trust Co., supra; Sabre* v. *Rutland R. Co.*, 85 Atl. 693; *Atlantic Coast Line R. Co.* v. *Carolina Corp. Com.*, 206 U. S. 1; *Southern Indiana R. Co.* v. *Railroad Com.*, 172 Ind. 113.

Unquestionably the Public Utility Act does not attempt to hinder the functions of the Philippine Courts, or in any wise impair the jurisdiction of those courts; the statute, as has been pointed out, expressly reserving the jurisdiction of these courts,

and providing that the action of the Board shall be subordinate thereto and marking out the procedure to be followed by the Board for the enforcement of its order. Thus it is seen that the statute clearly contemplates that the order of the Board shall be regarded as administrative and not judicial. Obviously it was not the intention of Congress, in requiring the preservation of the jurisdiction of the courts of the Philippine Islands, to forbid the government of the Philippine Islands to create administrative offices or bodies for such quasi-judicial functions as may be essential to the proper performance of their administrative duties.

Boards or commissions are invariably given the power to do what was done in this case, though not given the power to enforce its order by themselves, and the courts have uniformly upheld their authority. *Miller* v. *New York*, *supra*; *Stone* v. *Farmers L. & T. Co.*, *supra*; *Chicago, etc. R. Co.* v. *Peelts*, *supra*; *Minnesota* v. *Illinois*, *supra*; *Manufacturing Light etc. Co.* v. *Ott*, *supra*; *Union Bridge Co.* v. *United States*, *supra*. The latter case is directly in point upon the question here involved. In that case, the court had under consideration section 18 of the River and Harbor Act, providing that it shall be the duty of the Secretary of War, whenever he had reason to believe that any bridge constructed was an unreasonable obstruction to the free naviga-

tion of the river, to order the alteration thereof so as to render navigation reasonably free. The penalty was provided by the section for failure to obey the order, and appeal from the order was provided for. The Secretary of War in this case issued a notice to the Union Bridge Company to alter a certain bridge before the expiration of a certain time. The constitutionality of the act was questioned, upon the ground that it delegated legislative and judicial powers to the head of an executive department. The court, in disposing of this contention, said:

> "In no substantial, just sense does it confer upon that officer, as the head of an executive department, powers strictly legislative and judicial in their nature, or which must be exclusively exercised by Congress or by the courts. * * * In performing that duty, the Secretary of War will only execute the clearly expressed will of Congress, and will not, in any true sense, assert legislative or judicial power."

This court, in *Minnesota and St. Louis R. R. Co.* v. *Minnesota*, 193 U. S. 52, upheld the order of the Warehouse Commission of the State of Minnesota, requiring a railroad company to build and maintain a station house. In *North Carolina Corp. Commission* v. *Atlantic Coast Line Ry. Co.*, 51 S. E. 793, the court sustained the action of a corporation commission of North Carolina, ordering the Atlantic

Coast Line Ry. Co. to put in its track scales for weighing lumber shipped in its liners. In *State ex rel Northern Pacific Ry. Co.* v. *Railroad Commission of Wisconsin*, 140 Wis. 148, the court upheld the validity of an order made by the Railroad Commission directing a railroad company to make its crossings at a grade, and defraying the cost thereof. The contention was made in this case that the act was invalid as it purported to invest the commission with power to fix the proportion of the expenses of the crossings. The court dismissed this contention as being without merit.

In *Southern Indiana R. R. Co. et al* v. *Railroad Commission of Indiana*, 172 Ind. 113, a finding by the commission that freight charges were excessive and a direction that the company reduce the charges was sustained by the court. The court said:

> "The power conferred upon the railroad commission is analogous to the power of boards of commissioners just noticed. It is authorized to hear complaints, * * * create new rates. The power is in no sense judicial but administrative. * * * permission of the statute allowing the aggrieved party to bring his action in the circuit court is but a legislative scheme to have the decision of the commission judicially determined."

This court, in *Mississippi Railroad Commission* v. *Illinois Central Railroad Company*, 203 U. S. 335,

sustained the order of the Mississippi Railroad Commission directing the railroad company to stop three of its trains at a certain station. The case of *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, lays down the doctrine that commissions may be invested with power directing the performance of an Act and its order enforced by processes of the court by a judgment of a fine or imprisonment. The orders of these commissions are not judicial, and as such not enforceable by virtue of an execution, yet provision is made, in the statutes of various States creating boards or commissions for the punishment of the disobedience thereof. The lack of power to enforce an order is not an argument that there is no power to issue it. In the present case, the law sanctioned the order by imposing a penalty for the disobedience thereof. The power was not given to the Board of Public Utility Commissioners to execute its order but they must, as provided by the Act, resort to the courts for that purpose.

It has been held that the legislature, in conferring authority upon railroad commissioners, impliedly grants a right to invoke the aid of the courts to make the order effective. *State of Wisconsin* v. *Janesville Street R. R. Co.*, (Wis.) 22 L. R. A. 759; *Union Pacific Ry. Co.* v. *Hall*, 91 U. S. 343; *State North Eastern R. R. Co.*, (S. C.) 67 Am. Dec. 551.

The principle here contended for runs throughout

the cases, and we conceive it to be unnecessary further to multiply authority upon the point.

(b) *The Public Utility Law, Act No. 2307, does not impair the obligation of a contract.*

The appellee contended in the court below that this Act, providing a penalty for failure to obey the order of the commission, impaired the obligation of the alleged contract between the city of Manila and the appellee. This position is wholly untenable.

What the law is attempting to punish is not the infringement of a contractual obligation, but the disobedience of an order of the Public Utility Board. The mere fact that a penal statute might affect indirectly private relations, in that it may assure the fulfillment of an obligation or a duty, cannot be open to any constitutional objection. Every provision of a penal statute has this effect.

The penalty which is imposed by the Public Utility Act is not for violating a contract but for violating an order of the Public Utility Commission. This being its direct object, the fact that it also affects ndirectly the contractual obligation of a party can make no difference. The chief purpose of the law was to make the authority of the Public Utility Commission an effective one so that its order compelling public utilities to fulfill their duties might be obeyed.

The obligation imposed upon the appellee is not a contractual obligation, but one which is imposed by the law.

Act No. 484 of the Philippine Commission expressly provides that it shall be the duty of the grantee of the franchise, which is the appellee, to furnish free transportation to the members of the Police Department of the city of Manila wearing official badges. This duty, imposed by the law, is manifestly one which may be enforced by a penalty provided by subsequent statute. In *Davis et al.* v. *Vernon Shell Road Co.*, 103 Ga. 491, a case pertinent to the question under discussion, a road company failed to keep its road in repair and its omission so to do was made punishable by a law subsequent to the granting of a charter right by the legislature. The court, in sustaining the validity of the law, said:

> "The grant of chartered rights by one legislature to individuals cannot prevent subsequent legislatures from enacting measures looking to the police regulation of incorporated companies thus created. * * * Indeed, the weight of authority, as well as reason, points to the conclusion that one legislature has not the power, by any contract entered into in an Act creating a corporation, to so curtail the power of subsequent legislatures as to render it impossible for them to enact measures looking to the protection of the public against the abuse of corporate franchises. * * * The object of the statute is not to impair the obligation of a contract,

> but to enforce the discharge of a public duty arising thereunder."

In *Standifer* v. *Wilson*, 93 Texas 232, and in *Fristoe* v. *Blum*, 92 Texas 76, it was held that forfeiture to be declared by judicial decree for failure to pay the interest on the purchase price of school lands by the State in addition to prior rights given to rescind the sale or to enforce a lien for such purchase price does not impair any obligation of a contract.

It has been held that the remedy to enforce a contract is not part of the contract, and a change therein, provided it does not deprive a party of an effectual remedy, does not impair the obligation of a contract. *Templeton* v. *Horne*, 82 Ill. 491; *Chapin* v. *Billings*, 91 Ill. 539; *Richardson* v. *U. S. Mortgage Trust Co.*, 194 Ill. 259; *Davis* v. *Rupe, et al*, 114 Ind. 588; *Goodbub* v. *Horning's Estate*, 127 Ind. 181.

This court has held, *Mo. Pacific Ry. Co.* v. *Humes*, 115 U. S. 512, that:

> "The power of the state to impose fines and penalties for a violation of its statutory requirement is coeval with government; and the mode in which they shall be enforced, whether at the suit of a private party or at the suit of the public, and what disposition shall be made of the amounts collected, are merely matters of legislative discretion."

A case pertinent to the subject of inquiry is that of *State of Maryland* v. *Baltimore and Ohio*

Railroad Co., 44 U. S. 535. The facts in that case were the legislature of Maryland passed a law directing that subscription be made to the capital stock of a railroad, imposing upon it the duty of locating the road so as to pass through two counties and in case of failure, a forfeiture of $1,000,000 for the benefit of the county was provided for. Subsequently the legislature passed another law revoking this provision and the county, in whose favor the penalty had been provided, and through which the trains of the defendant were to pass, challenged the constitutionality of the act, upon the ground that it infringed a contractual obligation. In disposing of this contention, this court said:

> "Such penal provisions are to be found in many charters, and we are not aware of any case in which they have been held to be mere matters of contract. And in the case before the court, the language of the law requiring the company to locate the road so as to pass through the places therein mentioned, is certainly not the language of contract, but is evidently mandatory, and in the exercise of legislative power; and it is made the duty of the company, in case they assent to the provisions of that law, to pass through Cumberland, Hagerstown and Boonsborough; and if they fail to do so, the fine of $1,000,000 is imposed as a punishment for the offense. And a provision, as in this case, that the

> party shall forfeit a particular sum, in case he does not perform an act required by law, has always, in the construction of statutes, been regarded not as a contract with the delinquent party, but as the punishment for an offense. Undoubtedly, in the case of individuals, the word forfeit is construed to be the language of contract."

In *Mobile & Montgomery Railway Co.* v. *Steiner*, 61 Ala. 559, the court, in sustaining an act passed after the incorporation of a railroad company, punishing the charge of rate above the amount prescribed by law, said:

> "Where a law when a corporation is formed, or which it afterwards accepted, exacts certain duties of it, a subsequent statute imposing a penalty, where none existed before, for a failure to perform such duties, does not impair any corporate right or otherwise violate the constitution. It takes away no charter right. It only provides a penalty for the violation of its duty imposed by law."

This, too, is the doctrine laid down in *St. Louis I. M. & S. Ry. Co.* v. *Paul*, 40 S. W. 705.

In *State* v. *N. Jersey*, 84 Atl. 1057, the court had under consideration a statute similar to the one under review, requiring street railways to grant free transportation to the public officers while engaged in the performance of their duties. The court, in sustaining the validity of the Act, said:

> "I ought to sustain the legislation if I can, consistently with the constitutional provision. * * * Three considerations lead me to think I can. * * * (1) It is not strictly accurate to say that the company receives no compensation for carrying police officers if they pay no fare. * * * There is an indirect compensation in the protection of order by the mere presence of officer against pickpockets, * * *. (2) The statute may fairly be regarded as an exercise of the police power of the State. Policemen are required frequently to be on street cars in the execution of their duties to preserve peace, to enforce ordinances, and to prevent or detect crime. It would be difficult to distinguish in principle between his rights, for example, to be on crowded car to arrest pickpockets and his rights to be in a car not crowded to enforce the ordinance against operating."

This court, in *Beer Co.* v. *Moss*, 97 U. S. 125, held as the police power of a State extends to the protection of the lives, health and property of her citizens, the maintenance of good order and the preservation of public morals, the legislature cannot by any contract divest itself of the power to provide for these objects.

It is submitted that the conclusion is irresistible that, under the authoriites, the position of the appellee that the Act in question is invalid upon the

alleged ground that it impairs the obligation of a contract is clearly untenable.

Granting, for the sake of the argument, that the obligation imposed upon the appellee was a contractual obligation, and not one imposed by law, nevertheless the order passed by the Board of Public Utility Commissioners should be regarded, under the authorities, as valid. In the *City of Chicago* v. *O'Connell*, 116 N. E. 210, a case pertinent on this point, the court said:

> "A rightful exercise of the police power is not a violation of any of the provisions of the constitution upon which appellees rely; * * * and statutes affecting the owners of public utilities, by lessening their privileges, regulating their charges and increasing their burdens, within reasonable bounds, are uniformly held valid. * * * Appellees contend, however, that the settlement ordinances and the unification ordinance, having been accepted and acted upon by the railway companies, constitute binding contracts between the city and the railroad companies, and that their obligation cannot be impaired by any act of the legislature or by any order of the State Public Utilities Commission. Appellees' contention is undoubtedly sound so far as the contracts relate to matters which do not affect the public safety, welfare, comfort or convenience."

The remedy to enforce a contract is not a part of the contract, and a change therein, provided it does not deprive the party of an effectual remedy, does not impair the obligation of a contract. *Temple* v. *Horn*, 82 Ill. 491; *State* v. *Helms*, 136 Ind. 122; *Chapin* v. *Billings*, 91 Ill. 539; *Davis* v. *Rupe*, 114 Ind. 588; *Goodbud* v. *Horning*, 127 Ind. 181.

In *Temple* v. *Horne*, *supra*, in discussing this question, the court said:

> "Our understanding is, all remedies for enforcing contracts and obligations are within the control of the legislature, and any real change that does not amount to a deprivation of all efficient remedy, is in no just sense impairing the obligation of a contract."

In *Chapin* v. *Billings*, *supra*, the court said:

> "It is said that because this provision was adopted after the deed of trust was executed, it so far changes the remedy as to impair the obligation of a contract. * * * We are, therefore, wholly unable to conceive how it impairs a contract. It only operated to give the purchaser a more speedy means of enforcing a contract."

In *State* v. *Helms*, *supra*, the court said:

> "We have no doubt it is competent for the legislature to change the form of the remedy or to modify it otherwise as they may see fit."

Under the doctrine announced in the cases cited, the Board of Public Utility Commissioners had the power to make the order to enforce the provision of the franchise, irrespective of the question of whether the obligation is one imposed by law, and its act in so doing is not open to the objection that it constituted the impairment of a contractural obligation.

CONCLUSION.

It is respectfully submitted that the judgment of the Supreme Court of the Philippine Islands should be reversed.

Respectfully submitted,

Edward D. Bailey

Attorney for the Plaintiff in Error and Appellant.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

No. 230.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS,

Appellant and Plaintiff in Error,

v.

THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY,

Appellee and Defendant in Error.

BRIEF FOR THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, APPELLEE AND DEFENDANT IN ERROR.

B. H. Tyrrel, Printer, 2054 Frankfort Street, New York.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1918.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Appellant and Plaintiff in Error, v. THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, Appellee and Defendant in Error.	No. 230.

Brief for The Manila Electric Railroad and Light Company, Appellee and Defendant in Error.

Statement.

This is a writ of error and appeal from the Supreme Court of the Philippine Islands for a review of the judgment of that court vacating, setting aside and annulling an order of the Board of Public Utility Commissioners of those Islands.

The City of Manila, under the authority of Act No. 484 of the Philippine Commission, enacted October 20, 1902, and entitled "An Act providing for the granting of a franchise to construct an electric street railway on the streets of Manila and its suburbs, and a franchise to construct an electric light, heat and power system in the City of Manila and its suburbs, after competitive bidding," granted to Charles M. Swift in 1903, by Ordinance No. 44, a franchise for the construction, maintenance and operation of a street railway system for the carriage of passengers for hire in the City of Manila. The form of franchise granted by Ordinance No. 44 was set forth in Act No. 484 (R., p. 5.). This franchise was thereafter duly transferred by Swift to the Manila Electric Railroad and Light Company, a New Jersey corporation (hereinafter called the Railroad Company), the defendant in error and appellee herein, which thereupon became vested with all the rights and privileges and subject to all the duties and restrictions stipulated in the franchise.

One of the franchise provisions (paragraph 16) was as follows:

> "Members of the Police and Fire Departments of the City of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed. The fares charged children under seven years of age and children under sixteen years of age going to and from school shall not exceed half the ordinary rates of fare. Children in arms shall ride free. The grantee shall have the power to establish reasonable regulations for identifying those children going to and from school."

Under this franchise provision members of the police force of the City of Manila wear-

ing official badges openly have been given free transportation over the system of the Railroad Company since its commencement of operations in 1905. The Railroad Company ruled, however, from the beginning of its operations, that, in order to obtain such free transportation, the members of the police force must wear their official badges conspicuously displayed. The purpose of this rule has been to enable the inspectors and spotters of the Company to check up its conductors. This requirement of the Railroad Company was continuously complied with by the members of the Police Department for nine years, or until 1914, during which period secret service operatives, who did not wear their official badges openly, paid fares. During this nine years, the Police Department of the City of Manila paid about 40,000 pesos for the transportation of its secret service operatives, who travelled with badges concealed.

In May, 1914, the City of Manila asserted for the first time that it had the right, under the franchise provision quoted above, to have its secret service operatives carried free without wearing their official badges openly, and that such operatives were entitled to free transportation upon momentarily exhibiting badges to the conductors. The Railroad Company, adhering to its rule on this point which for nine years had been acquiesced in by the City, refused to permit such operatives to ride free, except when wearing their badges openly, and the City presented the matter to the Board of Public Utility Commissioners created by virtue of Act No. 2307 of the Philippine legislature.

By Section 14 of this Act the Board of Public Utility Commissioners is given "general supervision and regulation of, jurisdiction and control

over, all public utilities." Section 15, sub-section e, provides as follows:

> "That the Board shall have power . . . after hearing, by order in writing, to fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed thereafter by any public utility as herein defined."

and Section 16, sub-section a, provides as follows:

> "The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined:
> "(a) To comply with the laws of the Philippine Islands and with any provincial and municipal ordinance relating thereto and to conform to the duties imposed upon it thereby or by the provisions of its own charter, whether obtained under any general or special law of the Philippine Islands."

Section 32 provides a penalty of 200 pesos a day for any default by a person or public utility in compliance with any order of the Board.

After a hearing had before the Board of Public Utility Commissioners, that Board made the following order:

> " 'The Manila Electric Railroad and Light Company is, therefore, ordered to furnish free transportation to the members of the Police Department of the City of Manila belonging to the Secret Service Bureau thereof wearing their official badges, whether openly or concealed about their clothing in such a way that said badges may be displayed to conductors or inspectors on the Company's cars when required to do so for purposes of identification.
> This Order shall take effect the first day of July, nineteen hundred and fourteen.' (R., p. 18.)"

On or about the twenty-ninth day of June, 1914, a motion for a rehearing was presented to the Board by the defendant-in-error (R., pp. 18-19).

On August 29, 1914, the Board filed an opinion reaffirming the order which it had made on June 20, 1914 (R., pp. 20-25).

On September 9, 1914, the defendant-in-error filed in the Supreme Court of the Philippine Islands its petition for a judicial review as provided for in Sections 37, et seq., of Act No. 2307 (R., pp. 1-3). The City of Manila was a party to this proceeding, but is not a party to this appeal.

On April 15, 1915, the Supreme Court of the Philippine Islands granted an order vacating, setting aside and annulling the order of the Board of Public Utility Commissioners (R., pp. 4-7). The Court in so doing held that the provision of the franchise quoted above contemplated that their official badges in order to entitle policemen and firemen to free transportation should at all times be worn openly and visibly (R., pp. 3-6).

This appeal and writ of error is from that order.

POINT I.

This Court has no jurisdiction to review, revise, reverse, modify or affirm the judgment of the Supreme Court of the Philippine Islands in this cause.

Section 248 of the Judicial Code (36 Stat. L. 1158), as it stood at the time this appeal and writ of error was allowed, provided as follows:

> "[Appeals and writs of error from the Supreme Court of the

Philippine Islands.] [The Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the supreme court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby, in which the Constitution, or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court on appeal or writ of error by the party aggrieved, within the same time, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgment and decrees of the district courts of the United States.]"

Although the operation of this section has been modified by Chapter 448 of the Act of 1916 (United States Stat. L. Part I, p. 727) as it was in full force and effect at the time of the allowance of the appeal and writ of error in this case it governs the matter of jurisdiction.

(a) *No pecuniary value is in controversy upon which to base jurisdiction.*

Section 248, just quoted, provides that this court shall have jurisdiction in causes in which the value

in controversy exceeds twenty-five thousand dollars. No sum of money has at any time been directly involved in the determination of this cause. It is true that employees of the City of Manila, upon the hearing before the Board, stated that the City, over a nine year period, had been obliged by the regulations of the Railroad Company, complained of as unreasonable, to expend about 40,000 pesos ($20,000) as fares for secret-service agents, and that, were it finally determined by the courts that the order of the Board of Public Utility Commissioners was valid, the City of Manila would save future expenditures on this score, but this feature was only indirectly involved in the cause and cannot be claimed to confer jurisdiction upon this court within the meaning of Section 248 of the Judicial Code. Furthermore, the City of Manila is the only body which could at any time claim to have a pecuniary interest in the determination of the questions involved on this appeal and the City is not a party to this appeal. Therefore no value is even indirectly in controversy within the meaning of Section 248, for jurisdiction in a cause cannot be based on the interest of one not a party to the litigation and the Board of Public Utility Commissioners, the appellant, has no pecuniary interest at stake.

In *Caffrey* v. *Oklahoma Territory*, 177 U. S. 346, an action of mandamus was brought against a county clerk for refusing to comply with an order increasing the valuation of property. In denying the jurisdiction of this court to entertain an appeal by the defendant, Mr. Justice McKenna said (p. 348):

"There is controversy between the parties, respectively supported by affidavits, whether the effect of the order of the territorial board of equalization is to increase the taxes of the county $3,179.27 or $28,751.87. But whether it is one sum or the other, the plaintiff in error and appellant does not show that he has any interest in it. He does not allege that he is a property owner or a taxpayer of the county. He alleges he is its county clerk, and bases his resistance to the order of the territorial board of equalization upon his duty as such officer.

However, this may have justified his action, of which we express no opinion, or may have caused a dispute which the territorial court had jurisdiction to pass on and determine, it does not give us jurisdiction. To justify our taking jurisdiction there must be a controversy which involves pecuniary value exceeding $5,000 to the party appealing. In other words, there must be a dispute which involves a sum in excess of $5,000, and such sum, or property of its value, must be taken from him by the judgment which he seeks to review."

Colvin v. *Jackson*, 158 U. S. 456;
El Paso Water Co. v. *El Paso*, 152 U. S. 157.

The Board of Public Utility Commissioners is in a situation similar to that of the appellant in the Caffrey case, *supra*, and can sustain no jurisdictional claims on pecuniary grounds.

(b) *Neither the Constitution, nor any statute, treaty, title, right or privilege of the United States is involved in this case.*

It is true that it was argued by the Railroad Company before the Board of Public Utility Com-

missioners and before the Supreme Court of the Philippine Islands that Act 2307 of the Philippine legislature *as construed by the plaintiff in error* was invalid as constituting an impairment of the contractual obligation arising between the City of Manila and the Railroad Company upon the acquisition of its franchise, and as constituting an impairment of the jurisdiction of the courts of the Philippine Islands as defined in the Act of Congress of July 1, 1902, commonly known as the Philippine Bill. The determination of the Supreme Court of the Philippine Islands, in favor of the Railroad Company, however, was based upon what it considered to be the correct construction of the franchise provision, the court expressly disclaiming the necessity of passing upon the Constitutional or Federal points raised by the Railroad Company in its brief.

The Supreme Court of the Philippine Islands in its opinion (R., p. 5) stated:

> "The company in this proceeding has raised many questions relative to the jurisdiction, authority and power of the Board of Public Utility Commissioners. We have come to the conclusion, however, that we will rest our decision on what may be termed the merits of the controversy, that is, the construction of the clause in the company's charter already referred to; and our decision on that point being in favor of the company, it will be unnecessary to discuss any of the other questions raised by counsel for the company."

Since, therefore, the determination on the facts by the Supreme Court of the Philippine Islands was in favor of the Railroad Company, and no determination was made by the court upon the Constitutional or Federal questions raised, it cannot be contended as a basis for jurisdiction in this

court, that the Constitution or any statute, treaty, title, right, or privilege of the United States is involved in this appeal. Such a question is involved in a case only when determined adversely to the appellant by the court from which the appeal is taken, so that by review of the determination of the lower court upon the Constitutional or Federal question a reversal is possible. Such is not the present situation.

In *Anglo-American Provision Company* v. *Davis Provision Company*, No. 2, 191 U. S. 376, Mr. Justice Holmes said (p. 377):

> "Under the act of March 3, 1891, c. 517, §5, 26 Stat. 827, this must be maintained either as a case in which the jurisdiction of the Circuit Court is in issue, or as a case in which the 'law of a State is claimed to be in contravention of the Constitution of the United States.' With regard to the former ground, the Circuit Court sustained the jurisdiction, and the case is disposed of by United States *v.* Jahn, 155 U. S. 109, 114, 115. 'If the question of jurisdiction is in issue, and the jurisdiction sustained, and then judgment or decree is rendered in favor of the defendant on the merits, the plaintiff, who has maintained the jurisdiction, must appeal to the Circuit Court of Appeals, where, if the question of jurisdiction arises, the Circuit Court of Appeals may certify it.' With regard to the latter ground, the decision of the Circuit Court again was in favor of the plaintiff, and it has nothing of which to complain. 'As a general rule the court will not allow a party to rely on anything as cause for reversing a judgment, which was for his advantage.' Cited from Mr. Justice Curtis' dissent in the Dred Scott case, 19 How. 393, 566, in Mansfield, Coldwater & Lake Michigan Railway

Co. *v.* Swan, 111 U. S. 379, 383. This remark, to be sure, is not strictly in point, as the plaintiff would not ask to have the judgment reversed on the ground that this New York law was constitutional. But it, with the quotation from United States *v.* Jahn, helps to indicate a principle to be applied to the construction of the words 'in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.' Those words are general in form, but they do not mean that whenever a party makes a case of that sort he may appeal directly to this court whenever the decision is against him, no matter on what grounds, although his contention about the state law is sustained. If a party comes into the Circuit Court alleging that a state law is unconstitutional, and the Circuit Court decides for him on that point, the mere fact that there was such a question in the case does not authorize him to appeal to this court on grounds that otherwise would not support an appeal. See Lampasas *v.* Bell, 180 U. S. 276. The present case illustrates the principle. The argument for the appellant is devoted not to any constitutional or jurisdictional point, but to an attempt to upset the decision of the Circuit Court upon the question, mainly of fact, as to the good faith, etc., of Weed in taking the assignment of the judgment. The provisions of §5 of the act of 1891 were not intended to be made an instrument for such attempts.

Appeal Dismissed."

In *First National Bank* v. *City Council of Estherville*, 215 U. S. 341, Mr. Chief Justice Fuller said (p. 346):

"In order to give this court jurisdiction of a writ of error to the highest court of a State

> in which a decision could be had it must appear affirmatively that a Federal question was presented for decision, that its decision was necessary to the determination of the cause, and that it was actually decided or that the judgment rendered could not have been given without deciding it."

See also

> *Cleveland & Pittsburgh Railroad Co.* v. *City of Cleveland, Ohio*, 235 U. S. 50, 53;
>
> *Parker* v. *McLain, Executrix of McLain*, 237 U. S. 469, 471;
>
> *Vilas* v. *City of Manila*, 220 U. S. 345.

In the last-mentioned case, Mr. Justice Lurton defines the meaning of the word "involved" as it is used in Section 10 of the Philippine Organic Act (which was re-enacted as Section 248 of the Judicial Code) in the following language (p. 352):

> "This disposes of the question of the jurisdiction of this court grounded upon the absence from the petition of the plaintiffs of any distinct claim under the treaty of Paris, since under §10 of the Philippine Organic Act of July 1, 1902, this court is given jurisdiction to review any final decree or judgment of the Supreme Court of the Philippine Islands where any treaty of the United States 'is involved.' That treaty was necessarily 'involved,' since neither the court below nor this court can determine the continuity of the municipality nor the liability of the city as it now exists for the obligation of the old city, without considering the effect of the change of sovereignty resulting from that treaty. See Reavis *v.* Fianza, 215 U. S. 16, 22."

From an examination of these authorities it is clear that no Constitutional or Federal question is involved to furnish a jurisdictional basis for the present appeal. So far as its effect on the present status of this case is concerned, the Railroad Company might as well have never urged its constitutional rights or the effect of the Philippine Bill.

POINT II.

The judgment of the Supreme Court of the Philippine Islands contains no error and should be affirmed.

(a) *The rule of this court is to follow and sustain the local law as applied by the court below unless constrained to the contrary by a sense of clear error committed.*

Where, upon appeal, this court has been asked to review a question of fact decided by the court below, or to construe the meaning of a local statute, the meaning of which has already been expounded by the court whose judgment is appealed from, this court has consistently refused to disturb the finding complained of except in the unusual case where a patently erroneous decision has been made or some well-known legal principle left out of consideration. This principle was well expressed by Mr. Chief Justice White in his opinion in the case of *De Villanueva* v. *De Villa-*

nueva, 239 United States 293, in refusing to sustain the assignments of error (p. 298):

> "(a) Because in so far as they dispute the concurrent findings of fact of both the courts below they entirely fail to give rise to that conviction of clear error which must be entertained in order to authorize a reversal of the findings, Texas & Pacific Ry. *v.* Louisiana R. R. Commission, 232 U. S. 338; Gilson *v.* United States, 234 U. S. 380, 383-384; and (b) Because in so far as they challenge the correctness of the application which the courts made of the local law to the facts in deciding the cause, they are totally deficient in that persuasive strength which it is essential they should possess in order to produce the conviction that clear error was committed by the court below, and thus lead us to depart from the principle by which we follow and sustain the local law as applied by the court below, unless we are constrained to the contrary by a sense of clear error committed. Ker *v.* Couden, 223 U. S. 268, 279; Santa Fe Ry. *v.* Friday, 232 U. S. 694, 700; Nadal *v.* May, 233 U. S. 447."

In the case of *Arizona* v. *Copper Queen Consolidated Mining Company*, 233 U. S. 87, 94, Mr. Justice Day said, referring to the claim of the appellant in that case that the Supreme Court of the territory of Arizona had misconstrued a territorial statute:

> "In exercising appellate jurisdiction over the territorial courts, where the construction placed upon a statute of the Territory by the highest court thereof is brought in question, this court has frequently held that it will not reverse the action of the territorial court except in cases where manifest error in such construction appears. Straus *v.* Foxworth, 231 U. S. 162; Phoenix Railway Company *v.*

Landis, 231 U. S. 578; Work *v.* United Globe Mines, 231 U. S. 595."

See also:

Cardona v. *Quiñones,* 240 U. S. 83;
Santa Fe County v. *Coler,* 215 U. S. 296;
Albright v. *Sandoval,* 216 U. S. 331;
Toyota v. *Hawaii,* 226 U. S. 184;
Cordova v. *Folgueras y Rijos,* 227 U. S. 375.

The determination of the Supreme Court of the Philippine Islands in this case was based upon its conclusion with respect to the proper construction of Ordinance No. 44 by which the franchise was granted and it certainly cannot be considered that its determination was unreasonable or manifestly erroneous. This court therefore should, in accordance with its long-established practice, decline to disturb the finding of the Supreme Court of the Philippine Islands.

(b) *The decision of the Supreme Court of the Philippine Islands was correct as a matter of construction.*

It is not improper to draw the court's attention to the statement of Chief Green of the Manila Secret Service Bureau on the hearing before the Board (R., p. 15): "If I had the money to hire automobiles or carromatas and pay car fares, I would not bother with this matter at all. I haven't," as bearing upon the faith which the City of Manila had in its own construction of the franchise provision.

There is no controversy as to the facts. Whether or not the Railroad Company has been performing its franchise obligations depends entirely upon

the interpretation of the franchise clause, which, for convenience of examination, may again be quoted:

> "Members of the police and fire departments of the City of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed."

The Railroad Company's contention is, first, that the phrase "wearing official badges" was intended to designate those officers whose character is publicly evidenced by the badge, and to exclude those whose quality must be secret, even though they carry badges in their pockets or otherwise concealed about their persons, and, second, that even if the phrase "wearing official badges" is comprehensive enough to cover the carrying of concealed badges, yet the requirement that badges must be worn visibly is a "reasonable and proper restriction." The Board's theory is that all police officers are entitled to free transportation upon exhibiting an official badge as a means of identification, and that, as detectives must ordinarily conceal their character, the requirement of the Railroad Company is unreasonable because it requires the detectives to forfeit either their incognito or their privilege of free transportation. The fundamental question is this: Did the Philippine Commission, by the above language, intend that detectives should ride free upon momentary exhibition of an official badge?

This is a question of interpretation and our inquiry therefore is first to be directed to the words employed, and especially to the phrase "wearing official badges." The verb "to wear," used with

the name of some garment or adornment, without any qualifying word or phrase, conveys the idea of the ordinary use of the thing worn, and to express an abnormal use the verb must be in some way qualified.

Act No. 1696, section 4, of the Philippine Commission prescribes a penalty for "any person who shall wear.....any uniform or dress, or part thereof, adopted or used in the late insurrection." Would a conviction under that statute of one who carried in his pocket-book a button or shoulder-strap of an insurgent uniform be sustained?

The word badge is sometimes defined as follows:

> "Badge: a mark or sign worn by some persons, or placed upon certain things, for the purpose of designation. Some public officers, as watchmen, policemen, and the like, are required to wear badges that they may be readily known."
>
> *Bouvier, Law Dictionary.*

> "Badge—(1) A token or cognizance worn in allusion to the wearer's occupation, position, preferences, or achievements. (2) A mark, token, or device worn by servants, retainers, partizans, or followers, as a sign of their allegiance, or a similar token worn by members of an association to indicate their membership."
>
> *Century Dictionary.*

It is apparent from the definitions, and our common usage confirms it, that the office of a badge is to indicate to the sense of sight the quality of its wearer. An invisible badge would be a contradiction in terms—a paradox. As a badge is meant to advertise a character, to wear a badge must mean to carry it so that the wear-

er's quality, as Bouvier puts it, "may be readily known." So long as a badge is covered, it is not worn as a badge.

To convey the meaning that a concealed badge is carried, one must use more than the single word "wearing," and this fact was unconsciously recognized by the Board in phrasing its order requiring defendant in error to carry detectives "wearing their official badges, whether openly or concealed about their clothing."

It appears that all members of the Manila police department are provided with official badges, worn openly by the uniformed officers and carried concealed by the detectives. So, according to the theory of plaintiff in error, the obligation of the Railroad Company is to carry without charge *all* members of the department. But this leaves the phrase "wearing official badges" without significance, and that it was not inserted without intention appears from the history of the franchise. When the bill came to its final reading, the paragraph in question read: "Members of the police and fire departments of the City of Manila shall be entitled, etc." An amendment was then offered and passed to insert after the word "Manila" the words "wearing official badges" (R., p. 6). Evidently the amendment was intended to exclude from the privilege of free transportation *some* members of the department, *all* of whom wear badges, "whether openly or concealed about their clothing." The order of the Board in effect repeals the amendment. That every word and phrase of the act must, if possible, be given some effect is simply the statement of a standard rule of interpretation. It seems a fair inference that the Philippine Commission believed

that detectives should not be known as such even to the employees of the street-railway, and intended that detectives who could not openly show their membership in the police department should pay fares. Mr. Green testified (R., pp. 9, 10) that the efficiency of his force is impaired if his men are known to the public, and it is obvious that disclosure of their identity to the conductors and inspectors differs only in degree from openly wearing the badge.

Great weight was properly given by the Philippine Supreme Court to the practical construction of the franchise provision by the City and the Railroad Company over a period of nine years (R., pp. 4-6). If it should be thought that the meaning of the provision is ambiguous a well settled rule of law holds that the acts of the parties in adopting and following one construction should receive great weight and that hesitancy should be observed in overruling that construction.

The leading case on this principle is *United States* vs. *Alabama Railroad Company*, 142 U. S. 615 in which the Court said (p. 621):

> "We think the contemporaneous construction thus given by the executive department of the government, and continued for nine years through six different administrations of that department—a construction which, though inconsistent with the literalism of the act, certainly consorts with the equities of the case—should be considered as decisive in this suit. It is a settled doctrine of this court that, in case of ambiguity, the judicial department will lean in favor of a construction given to a statute by the department charged with the execution of such statute, and if such construction be acted on for a number of years, will look with disfavor upon any sudden change, whereby parties who have

> contracted with the government upon the faith of such construction may be prejudiced. It is especially objectionable that a construction of a statute favorable to the individual citizen should be changed in such manner as to become retroactive, and to require from him the repayment of moneys to which he had supposed himself to be entitled, and upon the expectation of which he had made his contracts with the government. These principles were announced as early as 1827 in *Edward's Lessee* v. *Darby*, 12 Wheat. 206, 210, and have been steadily adhered to in subsequent decisions. *United States* v. *State Bank of North Carolina*, 6 Pet. 29, 39; *United States* v. *Macdaniel*, 7 Pet. 1; *Brown* v. *United States*, 113 U. S. 568; *United States* v. *Moore*, 95 U. S. 760, 763."

Mr. Justice Nelson, in *Chicago* v. *Sheldon*, 9 Wallace 50, a case which was, like the instant one, a controversy between a city and a street railroad company as to the proper construction of a franchise, laid down the rule as follows (p. 54):

> "What adds great weight to this view is, it accords with the practical construction given to the contract by both parties. It was entered into, as we have seen, on the 23rd May, 1859. Several of these special assessments were authorized subsequently by the common council and collected, but no attempt was made to assess the railroad property of the company. Nor was any question raised as to its exemption till 1866, and not then by the city, but by some of the proprietors of lots fronting streets. In cases where the language used by the parties to the contract is indefinite or ambiguous, and, hence, of doubtful construction, the practical interpretation by the parties themselves is entitled to great, if not controlling influence. The interest of each, generally, leads him to a construction

> most favorable to himself, and when the difference has become serious and beyond amicable adjustment, it can be settled only by the arbitrament of the law."

These two decisions have been followed and the expressions quoted above have been reiterated in many opinions of the federal and state courts of which the following are illustrative:

> *Logan* v. *Davis*, 233 U. S. 613, 627;
> *Nelson* v. *Northern Pacific Railway*, 188 U. S. 108, 140;
> *United States* v. *Finnell*, 185 U. S. 236, 244;
> *Matter of City of New York*, 217 N. Y. 1, 12;
> *City of New York* v. *New York City Railway Company*, 193 N. Y. 543, 549.

If, therefore, the franchise provision can be said to be ambiguous we submit that the Philippine Supreme Court was correct in applying this rule and holding the City of Manila to its own construction.

It may reasonably be supposed that the chief of police was consulted as to the provision affecting the transportation of his men. When the defendant in error began the operation of its street-railway, many of the commissioners and members of the municipal board who had participated in the discussion of the act were still in office, and it is almost inconceivable that they would have accepted the interpretation applied by the defendant in error if it had not accorded with their own understanding of the legislative intent. When Mr. Green, in 1914, urged a new interpretation, there was not left in office one of the commissioners and members of the municipal board of 1902.

In 1911 the Philippine Legislature by Act No. 2034 granted a franchise for a street railway system in Cebu, and incorporated in that franchise the following provision:

> "Members of the police and fire department of the Municipality of Cebu wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed."
>
> Act No. 2034, section 2, article 7 (d).

When this act was passed, the practical interpretation of the Manila street railway franchise, whereby officers were required to wear their badges visibly in order to enjoy free transportation, had been applied for six years. If that practical application had not accomplished the desired purpose, the legislature would hardly have turned back to the old act and copied its exact language for the Cebu franchise. Act No. 2304 must be considered a legislative ratification of the interpretation that had been given in practice to the franchise provision in question in this case.

Even if the carrying of concealed badges could be considered a compliance with the condition "wearing official badges," yet the Railroad Company's requirement that the badge be visibly and continuously displayed while its wearer is enjoying free transportation is a "reasonable and proper restriction." It is the universal and necessary practice of street railway companies, as the court will judicially know, to employ inspectors and "spotters" to check the collection of fares by conductors. Uniformed inspectors constitute an insurance chiefly against carelessness. They check up the fares with the conductor, and could, with a

little trouble, identify detectives riding on concealed badges who might be pointed out by the conductor. But the secret agents, or spotters, who constitute a check against dishonesty of the conductors, could have no possible way of knowing that an individual whose official badge is concealed is entitled to free transportation. The simple and easy way to account for the passengers on a car who do not pay fare is to require of them some visible sign for identification.

It was suggested by the Board of Public Utility Commissioners, in its opinion (R., p. 17), that the Railroad Company might provide a means of checking detective passengers by issuing a special form of ticket to be distributed to his men by the chief of the secret service bureau. It seems apparent that the Philippine Commission did not contemplate the issue of tickets or the use of any means of identification other than the wearing of the police badge. If detectives were to be identified by special tickets, or some other means, the requirement that they wear badges, which is preserved even in the order of the Board, would be superfluous and meaningless. If such tickets were handed out without restriction, there would be little or no security against their use by persons not entitled to them; while if the tickets were doled out for single trips, an officer who, under the Board's construction of the ordinance, is at all times entitled to free transportation might not be able to enjoy it because not provided with sufficient tickets. One of the commonest forms of petty fraud in every community is the impersonation of officers; and if the order of the Board had been sustained, the forging of police badges might have been expected to increase in frequency and popularity.

POINT III.

The order of the Board of Public Utility Commissioners was beyond its power.

(a) *The order was judicial in its nature.*

The distinction between legislative and judicial functions can hardly be better stated than as in the opinion of Justice Holmes in *Prentis* vs. *Atlantic Coast Line Co.*, 211 U. S., 210, 226:

> "A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts, and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future, and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power."

See also:

Louisville & Nashville Railroad Company v. *Garrett*, 231 U. S. 298;
Interstate Commerce Commission vs. *Brimson*, 154 U. S. 447;
Delaware L. & W. R. Co. vs. *Stevens*, 172 Fed. 595;
Western Union v. *Myatt*, 98 Fed. 335;
State v. *Johnson*, 61 Kan. 803, 49 L. R. A. 662.

The order of the Board *sub judice* does not purport to make a new rule for the future. If it were of such a character, it would clearly be violative of the principle that private property shall not be taken for public use without just compensa-

tion—"for the right of a railroad company to receive pay for the transportation of passengers is its property" (*Delaware L. & W. R. Co.* vs. *Board of Public Utility Commissioners*, 85 N. J. L. 28, 88 Atlantic 849). The order purports to enforce "liabilities as they stand on present or past facts, and under laws supposed already to exist," and is consequently judicial in character.

In the case of *Interstate Commerce Commission* vs. *Brimson, supra*, a judgment in mandamus is mentioned by Justice Harlan as a typical illustration of the exercise of judicial functions:

> "It will be as much a judgment that may be carried into effect by judicial process as one for money, or for the recovery of property, or a judgment in mandamus commanding the performance of an act or duty which the law requires to be performed, or a judgment prohibiting the doing of something which the law will not sanction."

In *Delaware L. & W. R. Co.* vs. *Board of Public Utility Commissioners, supra*, an officer of the state had applied to the Board of Public Utility Commissioners of New Jersey for an order requiring a railroad company to transport him without charge under the supposed authority of a New Jersey statute. The Court says in part (p. 31):

> "The question . . . is precisely the same that would be presented if Hoagland, instead of complaining to the utilities board, had applied to this court for its prerogative writ of mandamus."

(b) The Board of Public Utility Commissioners lacks judicial powers.

It is well established that a state may, within constitutional limitations, regulate the rates and service of public utilities. Such visitation is legislative in character, and it may be exercised di-

rectly by the legislature, or it may be delegated to a board or commission. Congress, in the exercise of its control over interstate commerce, has created the interstate commerce commission. In substantially all states of the union there are commissions charged with the regulation of railroads and, to some extent, other public utilities. These commissions usually enjoy certain faculties ordinarily exercised by courts, such as the power to issue subpoenas, to administer oaths to witnesses, and to ascertain facts, and it is therefore commonly said that they have quasi-judicial powers; but it does not follow that such commissions are courts, nor that they are invested with judicial functions. As Justice Holmes says, in *Prentis* vs. *Atlantic Coast Line Co., supra* (p. 227):

> ". . . and it does not matter what inquiries may have been made as a preliminary to the legislative act. Most legislation is preceded by hearings and investigations. But the effect of the inquiry, and of the decision upon it, is determined by the nature of the act to which the inquiry and decision lead up. . . . The nature of the final act determines the nature of the previous inquiry."

Whatever the character of the proceedings of these regulatory commissions, their orders are prospective, establishing new rules for the future, and are therefore legislative under the definition heretofore quoted from the Prentis case. When an appeal lies from such an order to a court, the tribunal *ad quem* exercises legislative functions.

> *Prentis* vs. *Atlantic Coast Line Co., supra;*
>
> *Louisville & Nashville Railroad Co.* vs. *Garrett, supra;*
>
> *Atchison, T. & S. F. R. Co.* vs. *State*, 23 Okl. 510.

The Mississippi Supreme Court, limited by the state constitution to appellate jurisdiction, has held that the statute providing for direct appeal to the Supreme Court from the state railroad commission is unconstitutional because the commission is a mere administrative agency, not clothed with judicial powers.

> *Illinois Central R. Co.* vs. *Dodd*, 49 L. R. A. (n. s.) 565, and note.

So the Federal courts have held that state commissions are not courts, and may therefore be enjoined notwithstanding section 720 of the revised statutes.

> *Bacon* vs. *Rutland R. Co.*, 232 U. S. 134;
> *Prentis* vs. *Atl. Coast Line Co.* (Virginia), *supra;*
> *Mississippi Railroad Commission* vs. *Illinois Central Railroad Company* (Miss.), 203 U. S. 335.

> "Such a commission is merely an administrative board created by the state for carrying into effect a law of the state as expressed by its legislature."

> *Reagan* vs. *Farmers' L. & T. Co.*, 154 U. S. 362, 394.

We entirely concur in the statement made by plaintiff in error in its opinion on rehearing (R., p. 21):

> "It is significant in this connection that the validity of the Interstate Commerce Act has never been assailed on the ground that the Commission created thereby was vested with judicial powers in violation of the first section of the third Article of the Constitution of the United States. . . ."

But aside from the fact that neither the third Article nor any other provision of the Constitu-

tion inhibits Congress from conferring judicial powers upon the Interstate Commerce Commission, the point of chief significance is that the Interstate Commerce Commission has no judicial powers.

> "Of course the question of punishing the defendants for contempt could not arise before the commission, for, in a judicial sense, there is no such thing as contempt of a subordinate administrative body."
>
> *Interstate Commerce Commission* vs. *Brimson*, 154 U. S., 447, 488.

> "The interstate commerce commissioners are an administrative and not a judicial body."
>
> *Public Service R. Co.* vs. *Board of Public Utility Commissioners*, 81 N. J. Law 363.

The state courts have repeatedly held that state commissions are not courts nor invested with judicial functions.

NEW JERSEY:

> "In its mandate the order followed the language of section 40 of the General Railroad Act, as amended in 1911, and was therefore a direction to the railroad company to obey that statute. It is difficult to perceive what force can be attributed to the order of the board that was not previously possessed by the act of the legislature."
>
> *Delaware L. & W. R. Co.* vs. *Board, supra;*
>
> *Public Service Gas Co.* vs. *Board*, 87 Atl. 651, 84 N. J. Law 463.

VERMONT:

> *Bessette* vs. *Goddard*, 87 Vt. 77, 88 Atl. 1.

FLORIDA:

State vs. *Southern, etc., Co.*, 65 Fla. 270, 61 Southern 506.

ALABAMA:

Railroad Commission vs. *Northern, etc., Co.*, 182 Ala. 357, 62 Southern 749.

OKLAHOMA:

Atchison T. & S. F. R. Co. vs. *State, supra.*

MARYLAND:

Gregg vs. *Laird*, 121 Md. 1, 87 Atlantic 1111.

MISSISSIPPI:

Illinois C. R. Co. vs. *Dodd, supra;*
Wyman, Pub. Serv. Corp., sec. 1404.

Of course, in the absence of constitutional prohibition, commissions may be given true judicial powers, and this seems to have been accomplished in Virginia and California and Oklahoma.

Prentis vs. *Atl. Coast Line, supra;*
Pacific T. T. Co. vs. *Eshleman*, 166 Cal. 640;
Pioneer Tel. & Tel. Co. vs. *State*, 40 Okla. 417, 138 Pac. 1033.

But most states cling to the traditional segregation, and prohibit by their constitutions the vesting of both legislative and judicial powers in one person or body (see, for example, the constitution of New Jersey, article 3). The principle of separation is established in the Philippine Bill, and has been constantly recognized and followed in the Philippine legislation. Leaving for later discussion the power of the legislature to confer judicial functions upon the Board of Public Utility Commissioners, it may safely be asserted that there is a strong presumption against such interpretation

of Act No. 2307 as would make the Board a court. That the functions of the Board are preponderantly legislative is obvious, and any ambiguity in the Act must be resolved against the coexistence of judicial functions.

> "There is no liberty of the judiciary power if it be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be the legislator."
>
> *Montesquieu, Spirit of Laws*, B. 11, ch. 6.

> "The first maxim of a free state is that the laws be made by one set of men and administered by another; in other words, that the legislative and judicial characters be kept separate."
>
> *Paley, Moral Philosophy*, B. 6, ch. 8.

> "Were it, (the judicial power), joined with the legislative, the life, liberty and property of the subject would be in the hands of arbitrary judges, whose decisions would be then regulated only by their own opinions, and not by any fundamental principles of law; which, though legislators may depart from, yet judges are bound to observe."
>
> *Blackstone, Commentaries*, vol. 1, 269.

There was reason for the creation of an administrative board in the Philippine Islands. The legislature was seldom in session, and was so constituted that it could with difficulty undertake the regulation in detail of public utilities; the scope of the Board of Rate Regulation was very limited, and there existed no convenient and comprehensive means for regulating rates and service. There was no reason, however, for duplicating the courts. Ample and efficient remedies for compelling the observance of laws and ordinances were already available.

Act No. 2307 is copied in great part from the Public Utilities Law of New Jersey. Section 16 (a), on which plaintiff in error relies to justify its power to issue a writ of mandamus, is taken verbatim from the New Jersey law. It should therefore have the same meaning in the Philippines that it has in New Jersey. (Sutherland, Statutory Construction, Second Edition, sec. 404). But the New Jersey Board of Public Utility Commissioners is not a court, and lacks judicial powers. That board, when asked to pass upon a constitutional question, said:

> "The question so raised must be determined by some judicial tribunal, and not by this administrative board."
>
> *Reports of the Board of Public Utility Commissioners of the State of New Jersey*, Vol. 1, page 738.

The New Jersey board made an order requiring a railroad to carry certain officials without charge, under the supposed authority of an existing law. The court notices that the question of encroachment upon the prerogative of the courts was not presented, and says:

> "It is difficult to perceive what force can be attributed to the order of the board that was not previously possessed by the act of the legislature."
>
> *Delaware L. & W. R. Co.* vs. *Board, supra;*
>
> *Public Service Electric Co.* v. *B. P. U. C.*, 87 N. J. L. 128, 93 Atl. 707, affirmed 88 N. J. L. 603, 96 Atl. 1013.

Finally, it appears that the Board of Public Utility Commissioners of New Jersey, having ad-

mittedly legislative functions, could not, under the state constitution, be clothed with judicial power.

> "The powers of the government shall be divided into three distinct departments—legislative, executive, and judicial; and any person or persons belonging to or constituting one of these departments shall not exercise any of the powers belonging to either of the others, except as herein expressly provided."
>
> Constitution of New Jersey, Art. 3.

It would seem, therefore, that section 16 (a) was not intended to confer judicial power upon the Board, and an examination of the Act as a whole confirms this conclusion. The intention of the whole act will control the interpretation of its parts (Sutherland, sec. 370). It is apparent that the Board is given no power to enforce its orders by its own process. Even to compel obedience to its subpoenas, and to preserve order in its sessions, the Board must invoke the assistance of the courts (section 26). Surely the legislature did not intend to deprive a *judicial* body of such inherent attributes of all courts. The final orders of the Board are enforcible only by actions for a penalty or for writs of mandamus and injunction (section 32). This is certainly appropriate for *legislative* orders; statutes and ordinances are always enforced in just that way; but it is safe to say that an order not enforceable by process of its maker can not be a judicial character, and that the legislature must have intended that the only orders of the Board should be administrative or legislative.

> "Generally speaking, courts of law are not constituted to decide questions purely academic, and the fact that a court lacks the power to enforce a decision goes far toward proving that such decision is not within its

authority. This is particularly true of a court of special and limited jurisdiction."

City of Manila vs. *Lack*, 19 Phil. 324.

"'The award of execution,' said Chief Justice Taney, 'is a part, and an essential part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it.'"

Interstate Commerce Commission vs. *Brimson*, 154 U. S. 447, 484.

The Board is left free to make its own rules of procedure, and is expressly relieved from following the ordinary rules of evidence (section 25); it may take depositions in any manner it likes (section 27); although two members of the Board must concur in an order, testimony to support it may have been heard by only one (section 12); the Board may act upon its own initiative or upon complaint (sections 15-16); the orders of the Board apparently do not constitute *res adjudicata*, and if the determination of the Board herein had been in favor of the public utility, the city might have presented the same question thereafter to the courts in the form of a petition for a writ of mandamus (section 36); no supersedeas except by order of court (section 38). All of these provisions are entirely compatible with the exercise of legislative authority, and entirely inconsistent with judicial functions.

Again, the Philippine Supreme Court is allowed to set aside an order of the Board only when "it clearly appears that there was no evidence before the Board to support reasonably such order, or that the same was without the jurisdiction of the Board" (section 37). This is a natural and reasonable provision as to legislative orders, such as

regulations of rates and service, but it is so extraordinary with respect to judicial orders that it tends strongly to prove that the legislature did not contemplate that judicial orders might be made by the Board. Surely it was not intended that in a case like the present the City might apply, at its election, either to the Court of First Instance or to the Board of Public Utility Commissioners for a writ of mandamus, and that the Philippine Supreme Court might reverse the judgment in the first case on a mere preponderance of evidence, but must affirm the order in the second case if a scintilla could be shown to support it, and this notwithstanding that the procedure of the Board is lacking in many of the safeguards established for the courts. The Supreme Court of New Jersey has said of the Board of Public Utility Commissioners of that state:

> "A legislative body prescribing a rule for future conduct is not limited by the same considerations of justice as a tribunal required to do justice in accordance with existing rules; and one in the position of a public prosecutor can hardly be supposed to preserve a judicial frame of mind; he is rather in the position of one who is the judge in his own cause."
>
> *Public Service Gas Co.* vs. *Board*, 87 Atl. 651, 653; 84 N. J. L. 463, 467.

Plaintiff in error relies wholly upon section 16 (a), but it is quite possible to give this clause an interpretation consistent with the whole of the act, with natural right, and with constitutionality. That the Board may "require" a public utility to comply with the provisions of its charter does not necessarily mean that the Board may issue a writ of mandamus supported by a penalty for non-performance.

Section 16 (a) authorizes the Board to require a public utility to comply with the laws and ordinances. Can it be reasonably inferred that the Board is thereby invested with the extraordinary power of incorporating an existing law in an order, and thus establishing a penalty for its breach different from that which the law itself carries?

POINT IV.

Act 2307, as construed by plaintiff in error, is invalid.

(a) *It authorizes the impairment of the obligation of a contract by the Board.*

Let us assume, for the sake of the argument, that the legislature intended, by section 16 (a) of Act No. 2307, to authorize the Board of Public Utility Commissioners to make its order requiring the Railroad Company to perform its contractual obligations to the City of Manila, with the penalty of P200 per day for disregard of such order. As the Board acts by delegated authority, let us further simplify the question by supposing that the Legislature itself had enacted a law providing a penalty of P200 per day for failure of the Railroad Company to carry Manila policemen free of charge. It seems clear that such a law would impair the obligation of the contract between the city and the Railway Company. The imposition of such a penalty for non-performance might perhaps be justified under the police power if the obligation so supported were affected with a public interest, as if the legislature should prescribe a penalty for the failure to equip cars with fenders

or to furnish reasonable service. But the obligation to carry policemen free of charge, like the obligation to pave a part of the street and to pay a percentage of gross earnings, is merely a part of the consideration for the franchise, and depends purely upon contract and not upon the quasi-public character of the enterprise. The attempt to impose a new penalty for breach of this contract would be no different in principle from an attempt by legislation to prescribe a new penalty for the breach of an existing contract to erect a public building.

> "As a railroad corporation is in a sense public, the legislative power over it is greater than its power over strictly private corporations or individuals. Yet, the legislative power is only greater in so far as a railroad corporation is public, and, on principle, it is not greater over private rights, such for instance as contract and property rights not affecting public duties, than is its power over strictly private corporations or natural persons. There is reason for affirming that in so far as a railroad corporation is public, the legislative power is much greater than over natural persons or strictly private corporations, but there is no valid reason for affirming that, as to purely private rights, the legislative power is greater than over strictly private corporations or individuals."
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> *Elliott on Railroads*, Section 659.

> "The general rule above stated (that an ordinance enacted under reserved power may be enforced by penalties) must be held to apply only to regulations the authority to enact which depends solely upon the exercise of police powers, and not to conditions imposed by an ordinance enacted by virtue of a reservation in a by-law, which partakes of the character of a contract."
>
> *Detroit* vs. *Fort Wayne, etc., Co.*, 20 L. R. A. 80.

A toll-road company was organized under a charter providing, as the only penalty for not keeping its road in repair, that the toll-gates should be kept open until the road was put in order. It was held that a subsequent law authorizing the local authorities to maintain an action for a penalty for failure to keep the road in order impaired the obligation of the contract.

Habersham, etc., Turnpike Co. vs. *Taylor*, 73 Ga. 552.

(*b*) *It impairs the jurisdiction of the courts.*

It was the intention of Congress, expressed in the Act of July 1, 1902, commonly known as the Philippine Bill, that the Philippine judiciary should be an effectual check on the other departments of government, and to that end provision was made, in section 9 of the act, that the jurisdiction of courts of record should not be diminished:

> "The Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by the Government of said islands, subject to the power of said government to change the practice and method of procedure" (sec. 9).

> "The jurisdiction of the Supreme Court and the Courts of First Instance, as fixed by section 9 of the Philippine Bill, may be added to, but not diminished, by the Philippine Legislature."

Barrameda vs. *Moir*, 25 Phil. 44, 46.

In the Barrameda case it was assumed that the Philippine Bill does not prohibit the granting to another tribunal of jurisdiction concurrent with

that of the courts protected by Congress. That decision implies, at least, that justices of the peace might lawfully have been given jurisdiction to adjudicate title to realty, if not exclusive of coordinate jurisdiction of the Courts of First Instance. But it would seem that this theory opens an easy way to defeat the purposes of Congress, for the legislature may establish a new tribunal of concurrent jurisdiction, and make it so attractive to parties plaintiff that the older courts, while left with nominal jurisdiction, would be deprived of all opportunity to exercise it. Who would apply to the Court of First Instance or the Philippine Supreme Court for a writ of mandamus to a public utility, if he might go to the Board of Public Utility Commissioners, where he pays no docket fees and no sheriff's fees, where the Board will prosecute his case for him, and where he may reasonably expect more sympathy from a disciplinary body than he would find in a court whose sole functions are judicial? Practically the jurisdiction of a court is diminished when it is made concurrent instead of exclusive, and so long as plaintiffs have an election between courts, it is easy for the legislature, under the rule established in the Barrameda case, to evade the restriction which Congress intended to impose.

But even though the exercise of the Board of Public Utility Commissioners of the judicial prerogative of mandamus be held not to diminish the jurisdiction of the Courts of First Instance, it must be apparent that Act No. 2307, as construed by the plaintiff in error, lessens the powers of the Philippine Supreme Court. On July 1, 1902, the Philippine Supreme Court had both original and appellate jurisdiction, and it was doubtless the intention of the Philippine Bill to protect the jurisdiction of the Philippine Supreme Court in both capacities. In mandamus

the Philippine Supreme Court might exercise original jurisdiction concurrent with that of the Court of the First Instance, and appellate jurisdiction as to cases originating in the inferior court. In the exercise of its appellate jurisdiction, the Philippine Supreme Court had power to pass upon the facts, so that until the creation of the Board of Public Utility Commissioners there could be no case in mandamus wherein the Philippine Supreme Court might not finally determine the propriety of issuing the writ upon the law and a preponderance of evidence. Act. No. 2307 allows no appeal, strictly speaking, to the Philippine Supreme Court, and in section 37 so limits the authority of the Philippine Supreme Court that it may not set aside an order of the Board unless "it clearly appears that there was no evidence before the board to support reasonably such order, or that the same is without the jurisdiction of the board." Practically this deprives the Philippine Supreme Court of all appellate jurisdiction in mandamus cases originating in the Board of Public Utility Commissioners, for under the circumstances justifying annulment under section 37, an order of the Board would be a nullity without the intervention of the Philippine Supreme Court.

Plaintiff in error relies upon the opinion written by Justice Moreland for the Philippine Supreme Court in the case of *Manila* vs. *Lack*, 19 Phil. 324, with respect to the establishment of the Court of Land Registration, which is in part as follows:

> "Courts (of First Instance) theretofore of general, original, and exclusive jurisdiction were shorn of some of their attributes and deprived of certain of their powers. In other words, their powers were restricted."

It might well be argued that the functions of the land court are new and were not previously exercised by the Courts of First Instance; but if, as Justice Moreland appears to say, Act No. 496 diminished the jurisdiction of the Courts of First Instance, then it is impossible to reconcile that ruling with the later opinion of this court in *Barrameda* vs. *Moir*, *supra*.

If the legislature, in Act No. 2307, had made the orders of the Board of Public Utility Commissioners final, the difference would be not of principle, but of degree. If in one class of cases the Philippine Supreme Court may be shorn by the legislature of its prerogative of reviewing the decisions of inferior tribunals, there is no apparent reason why the process may not be carried further, and all decisions of *nisi prius* courts be declared final and unappealable, leaving the Philippine Supreme Court with no functions except the exercise of its scanty original jurisdiction.

POINT V.

No proper assignment of errors was filed by the plaintiff in error upon its petition for a writ.

Rule 35 of this court prescribes with regard to appeals and writs of error taken from a District Court direct to this court, that:

> "Plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted or intended to be urged. No writ of error or

> appeal shall be allowed until such assignment of errors shall have been filed..... Such assignment of errors shall form part of the transcript of the record, and be printed with it. When this is not done counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned."

Section 248 of the Judicial Code governing writs of error and appeals from the Supreme Court of the Philippine Islands to this Court, provides in effect, that the same regulations and procedure, as far as applicable, shall govern the review of final judgments and decrees from the Supreme Court of the Philippine Islands as govern the reviews of the final judgments and decrees of the District Courts of the United States.

The only assignments of error made by the plaintiff in error are as follows:

> "1. The court erred in setting aside the order of the Board of Public Utility Commissioners of the Philippine Islands.
>
> "2. The court erred in holding that said order was erroneous."

It is quite obvious that these assignments of errors do not meet the requirements of Rule 35, as they merely amount to a statement that the decision of the court below was wrong and do not set out any separate or particular errors intended to be urged. An assignment of errors which does not point out with particularity some specific matter in the transcript of record which can be examined and passed on by this court is absolutely useless so far as fulfilling the purpose for which assignments of errors are required to be made. Nor will this Court, when no plain error exists

and no proper assignments of error are made, consider errors argued before it and not assigned. As there was no error in the decision of the Supreme Court of the Philippines, plain or otherwise, the appellant's counsel has not saved its appeal from failing for insufficient assignments of error by elaborating those assignments in his brief.

Behn, Meyer & Co. v. *Campbell & Go Tauco*, 205 U. S. 403.
Paraiso v. *United States*, 207 U. S. 368;
Briscoe v. *District of Columbia*, 221 U. S. 547;
Farrar v. *Churchill*, 135 U. S. 609.

Conclusion.

It is submitted that this Court should disclaim jurisdiction to review this cause or, if it assumes jurisdiction, that the judgment of the Supreme Court of the Philippine Islands should be affirmed.

Respectfully submitted,
PAUL D. CRAVATH,
Attorney for Appellee and Defendant in Error.

ROBERT H. NEILSON,
SHERMAN WOODWARD,
of Counsel.

BOARD OF PUBLIC UTILITY COMMISSIONERS *v.* MANILA ELECTRIC RAILROAD & LIGHT COMPANY.

APPEAL FROM AND ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 230. Argued March 14, 1919.—Decided March 24, 1919.

A judgment of the Supreme Court of the Philippine Islands, which denied the right of the Board of Public Utility Commissioners to require a Manila street car company to give free transportation to detectives wearing their badges concealed, and was based wholly upon a construction of the company's franchise ordinance, *held* not subject to review under Jud. Code, § 248, before the amendment of September 6, 1916, (1) as clearly not involving the Constitution or any statute, treaty, title or privilege of the United States, and (2) because the value in controversy was not shown to exceed $25,000.

Writ of error and appeal to review 30 Phil. Rep. 387, dismissed.

THE case is stated in the opinion.

Mr. Edward S. Bailey for appellant and plaintiff in error.

Mr. Robert H. Neilson, with whom *Mr. Paul D. Cravath* and *Mr. Sherman Woodward* were on the brief, for appellee and defendant in error.

Memorandum opinion by MR. CHIEF JUSTICE WHITE.

The Manila Electric Railroad & Light Company, the appellee, operated in the City of Manila a street railway and an electric light and power plant by virtue of a franchise conferred by an ordinance adopted in 1902 by the City in the exercise of a power given it by the local legislative authority.

From the beginning, in giving effect to the provision of the franchise ordinance requiring that "members of the Police and Fire Departments of the City of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee," that requirement was treated by the grantee as not embracing members of the detective branch of the Police Department who did not publicly wear official badges, although having such badges concealed upon their persons in such manner that they could be exposed or inspected when desired.

In 1914 the Board of Public Utility Commissioners, deeming that members of the detective force not publicly wearing their badges were entitled to ride free under the provisions of the ordinance, after notice and hearing to the Railroad on the subject, entered an order directing that members of the detective force be allowed to ride free under the circumstances stated. The Railroad, challenging the validity of the order, refused to obey it and, availing of the remedy provided by the local law, invoked the jurisdiction of the Supreme Court. In that court it disputed not only the correctness of the interpretation which had been given the ordinance by the Utility Commissioners but charged that if such interpretation were enforced a violation would result of the rights of the company in particulars stated guaranteed to it by the Bill of Rights provided by Congress for the Philippine Islands. The court, passing as unnecessary to be considered all the contentions made by the Railroad but the single one concerning the duty of the company under the franchise ordinance to furnish the free transportation ordered, decided that under the text of that ordinance the duty to furnish such transportation did not exist, and therefore set aside the order of the Commissioners. That body, both by error and appeal, brought the subject here for consideration.

As the action of the court complained of was taken

before the Act of September 6, 1916, and the appellate jurisdiction of this court was invoked before that act went into effect, our power to review is governed by § 248 of the Judicial Code. By that section the authority to review under the situation here disclosed can depend only upon one or both of two considerations, (a) whether the Constitution or any statute, treaty, title or privilege of the United States is involved, or (b) whether the value in controversy exceeds $25,000. *Compañia General* v. *Alhambra Cigar Co.*, *ante*, 72.

We are of opinion that the mere construction by the court of the franchise ordinance, and its consequent ruling that the duty did not rest on the Railroad Company to give the free transportation which the orders of the Commissioners had directed to be given affords no ground for bringing the case within the first consideration, and indeed, that the contention that it does is too unsubstantial, not to say frivolous, to afford any basis for jurisdiction; and that the same conclusion is inevitably required as to the second consideration as the record discloses no ground whatever for concluding that the Utility Commissioners had any such pecuniary interest as to bring the case within the statute.

Dismissed for want of jurisdiction.